



COVID-19 National Cabinet Mandatory Code of Conduct

A jurisdictional
compendium of
commercial leasing
principles during
COVID-19

—
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Version 8

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.

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This communication was prepared by MinterEllison for information only. This is not intended to be legal advice. Whilst this compendium is comprehensive and detailed, it is by no means exhaustive. Moreover, by paraphrasing the legislation, its meaning may at times be open to interpretation. Accordingly, this compendium must only be used as a guide and not as an in-depth analysis of the finer legal points of the COVID-19 commercial tenancy legislation in Australia. If you require professional legal advice, please contact our experts listed at the end of this compendium. We strive to keep the information posted here accurate and up to date – but we cannot guarantee that it is error-free or completely current. We use your personal data (such as your name, address and email) to send you the latest legal developments, firm news, and invitations to events and legal briefings that may be of interest to you. View our privacy policy online at <https://www.minterellison.com/privacypolicy>

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	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 Conveyancing (General) Regulation 2018 Sch 5	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 Notice Under Section 22	COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020	Commercial Tenancies (COVID-19 Response) Regulations 2020	Nil.
Other Legislation	Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020	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			COVID-19 Disease Emergency (Commercial Leases) Act 2020 COVID-19 Disease Emergency (Commercial Leases) Regulations 2020			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

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		<u>businesses who rent premises from the State government to mitigate the financial impact arising from the COVID-19 pandemic.]</u>						<u>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.]</u>
Useful External Resources	<u>New South Wales Small Business Commissioner – commercial leases and COVID-19 FAQs</u>	<u>Queensland Small Business Commissioner – Small business leasing advice and dispute resolution</u>	<u>ACT Government – COVID-19 commercial tenancies information (including a PDF document with guidance notes for landlords and tenants)</u>	<u>Victorian Small Business Commission - commercial tenancy relief scheme - support for tenants and landlords in response to COVID-19 FAQs</u>	<u>Consumer, Building and Occupation Services Tasmania – Changes to commercial tenancies during COVID-19 (including advice pages for landlords and tenants)</u>	<u>Small Business Commissioner South Australia – Essential Information for Lessees and Lessors dealing with COVID-19.</u>	<u>Small Business Development Corporation – FAQs – COVID-19 commercial tenancy changes</u>	<u>Northern Territory Consumer Affairs – commercial leases affected by COVID-19</u>
PANDEMIC 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

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Ends	24 October 2020	30 September 2020	The first day no COVID-19 emergency is in force or any later day notified by the Minister. At present, the prescribed period ends on 7 July 2020. The ACT Government has issued guidance which indicates its intention to extend the application of the declaration to 30 September 2020 to align with the expiry of the JobKeeper program	29 September 2020	2 June 2021, if not declared earlier by the Treasurer	30 September 2020	29 September 2020, unless another end date is prescribed.	26 June 2020
If JobKeeper is extended will the Principal Act, Delegated Legislation or Other Legislation be automatically extended?	No. The extension of the JobKeeper Payment beyond 27 September 2020 will not automatically extend the operation of the Principal Act, Delegated	No. The extension of the JobKeeper scheme beyond 27 September 2020 will not automatically extend the operation of the Principal Act or the Delegated	No. The extension of the JobKeeper Payment beyond 27 September 2020 will not automatically extend the operation of the Principal Act, Delegated	No. The extension of the JobKeeper scheme beyond 27 September 2020 will not automatically extend the operation of the Principal Act or the Delegated	No. The extension of the JobKeeper scheme beyond 27 September 2020 will not automatically extend the operation of the Principal Act, the Delegated	No. The extension of the JobKeeper scheme beyond 27 September 2020 will not automatically extend the operation of the Principal Act, the Delegated	No. The extension of the JobKeeper Payment beyond 27 September 2020 will not automatically extend the operation of the Principal Act or any Delegated	No. The extension of the JobKeeper scheme beyond 27 September 2020 will not automatically extend the operation of the Principal Act or

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<p>Legislation or Other Legislation in NSW.</p> <p>New Part 11 of the Retail Leases Act 1994 (regulation making power) created under the Principal Act is limited in time to 6 months.</p> <p>This is reflected in section 12 of the Retail Regulation and section 11 of the Commercial Regulation with the result that the Delegated Legislation expires on 24 October 2020.</p> <p>Note: If the Minister wished to create new regulations under the Principal Act, the Minister may recommend to the Governor that further</p>	<p>Legislation in QLD.</p> <p>Pursuant to section 25 of the Principal Act, the Principal Act expires on 31 December 2020. Further, section 23(6) of the Principal Act provides that a regulation made under that section pertaining to retail leases and other prescribed leases expires on 31 December 2020. This is reflected in r 2 of the Delegated Legislation.</p> <p>Under the Delegated Legislation, the requirement for a landlord to provide rent relief only applies during the 'response period' (refer to r</p>	<p>Legislation or Other Legislation in the ACT.</p> <p>New Part 17 of the Leases (Commercial and Retail) Act 2001 (ACT) (COVID-19 emergency response) created under the Principal Act is limited in time to expire at the end of a 3 month period during which no COVID-19 emergency has been in force.</p> <p>The Delegated Legislation created under the Part 17 of the Leases Act applies if an impacted tenant commits a prescribed breach of a prescribed lease during the prescribed period. The</p>	<p>Legislation in VIC.</p> <p>Part 2.2 of the Principal Act ('Regulations temporarily modifying law relating to retail leases and non-retail commercial leases and licences') is limited in time to 6 months.</p> <p>This is reflected in section 25 of the Delegated Legislation with the result that the Delegated Legislation expires on 29 September 2020.</p> <p>Note: If the Minister for Small Business wished to create new regulations under the Principal Act, the Minister may recommend to the Governor in Council that</p>	<p>Legislation or the Other Legislation in TAS.</p> <p>The Other Legislation has effect for the 'financial hardship period, being the period commencing on 1 April 2020 and ending on the day that is 12 months after the commencement day (which is 2 June 2021), unless declared earlier by the Treasurer under section 31(3) of the Other Legislation.</p> <p>Under section 31(2) of the Other Legislation, the Treasurer may only declare a day to be the 'financial hardship cessation day' if he or she is reasonably of the</p>	<p>Legislation or the Other Legislation in SA.</p> <p>The material provisions of the Principal Act (section 7) and the regulations made under that section expire on 30 September 2020 (refer section 6(2)(a)).</p> <p>Note: The Governor may make regulations of a savings or transitional nature consequent on the expiry of any provision of the Principal Act or on the revocation of any regulation (refer section 20) but the Principal Act will itself expire at the latest on 9 October 2020 (refer section 6(1)(b)).</p>	<p>Legislation in WA.</p> <p>Pursuant to section 25 of the Principal Act, the Principal Act expires on the day that is 12 months after the day on which the 'emergency period' ends. The 'emergency period' is currently scheduled to expire on 29 September 2020 but this could be extended by regulations. The Delegated Legislation will expire when the Principal Act ends.</p> <p>Under the Principal Act and the Delegated Legislation, the restrictions on the landlord taking a 'prohibitive</p>	<p>the Delegated Legislation in NT.</p> <p>The amendments to the Other Legislation introduced by the Principal Act have effect during the following periods: (a) while the COVID-19 public health emergency is declared under section 48 of the Public and Environmental Health Act 2011; and (b) while a declaration under sections 18, 19 or 21 of the Emergency Management Act 2013 in relation to COVID-19 is in force. The public health emergency is currently declared until 24 September 2020 (Government</p>

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<p>regulations be made (on same or different terms within the ambit of the Principal Act) only if:</p> <p>(a) Parliament is not currently sitting and is not likely to sit within 2 weeks after the day the regulations are made; and</p> <p>(b) in the Minister's opinion, the regulations are reasonable to protect the health, safety and welfare of lessees or tenants under the Principal Act.</p> <p>If further regulations were made and NSW adopted the same 'eligibility' test for an impacted lessee, then based on Treasury's 21 July 2020</p>	<p>15(2)(a)), which is defined in Schedule 1 as being the period from 29 March 2020 to 30 September 2020.</p> <p>Note: If the Minister wished to create new regulations under the Principal Act, the Principal Act would need to be amended to extend the expiry date. This can only be achieved through the introduction and subsequent passing of an amendment bill. Once the Principal Act has been amended, then the Delegated Legislation can be amended, provided that the amendment is made in response to the</p>	<p>prescribed period means the period beginning on 1 April 2020 and ending on either the first day no COVID-19 emergency is in force or any later day notified by the Minister under section 177(3)(b) of the Leases Act.</p> <p>A COVID-19 emergency is declared under the Emergencies Act 2004 (ACT) or the Public Health Act 1997 (ACT) and is not referable to the end date of the JobKeeper Payment.</p> <p>Note: The Minister may notify a later day (not later than 3 months) under s 177(3)(b) of the Leases Act if the Minister</p>	<p>further regulations be made only if:</p> <p>(a) the Minister is of the opinion that the regulations to be made are reasonably necessary for responding to the COVID-19 pandemic; and</p> <p>(b) the Minister for Small Business consults with the Minister for Jobs, Innovation and Trade before making the recommendation.</p> <p>Under section 15(1)(p) of the Principal Act, the Governor in Council, on recommendation of the Minister for Small Business, may make regulations for and with respect to 'any matter or thing required or permitted or</p>	<p>opinion that the effects caused by, or relating to, the disease-related factors, and the deleterious economic effect of those factors, have sufficiently reduced, so that it is reasonable to cease to provide to tenants the protection intended to be provided to tenants by the provisions of the Other Legislation.</p> <p>The TAS Government has issued guidance which indicates its intention that the 'financial hardship period' be in line with the National Code (which is in effect until the JobKeeper program remains operational), therefore it is</p>		<p>action' and the requirement for a landlord to provide rent relief only applies during the 'emergency period' (refer to section 9 of the Principal Act and clause 7(2) of the Delegated Legislation).</p> <p>Note: The Governor can make a regulation to extend the 'emergency period' beyond 29 September 2020. If such a regulation was made, the restrictions on taking 'Prohibitive Action' and the requirements to provide rent relief will continue beyond 29 September 2020.</p> <p>If the 'emergency period' was</p>	<p>Gazette No S36 of 23 June 2020). There is no direct link between the declarations and the JobKeeper scheme.</p>

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<p>announcement, a tenant will need to demonstrate the decline in turnover test (generally 30%) with reference to actual GST turnover in the June and September 2020 quarters to be eligible for JobKeeper from 28 September 2020 to 3 January 2021 and then again for the June, September and December quarters 2020 to remain eligible for JobKeeper from 4 January 2021 to 28 March 2021.</p>	<p>COVID-19 emergency.</p> <p>If the Delegated Legislation was extended but not amended in any other respect, then a landlord would continue to have an obligation to provide rent relief to tenants, provided each tenant is an SME entity and eligible for the JobKeeper scheme (but note there is no requirement for a tenant to be a participant in the JobKeeper scheme).</p>	<p>considers the effect of the COVID-19 pandemic justifies this instrument being in force for a longer period.</p>	<p>necessary to be prescribed to give effect' to Part 2.2 of the Principal Act.</p> <p>If further regulations were made and VIC adopted the same 'eligibility' test for an eligible lease, then based on Treasury's 21 July 2020 announcement, a tenant will need to demonstrate the decline in turnover test (generally 30%) with reference to actual GST turnover in the June and September 2020 quarters to be eligible for JobKeeper from 28 September 2020 to 3 January 2021 and then again for the June, September and</p>	<p>likely that the 'financial hardship cessation day' will not be declared by the Treasurer to be a date which is earlier than 28 March 2021.</p>		<p>extended but the current Delegated Legislation was not amended and new regulations were not made, the 'eligibility' test will remain as currently prescribed in the Delegated Legislation.</p>	

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		It is however open to the Minister to make amendments to the Delegated Legislation in addition to merely extending the response period, including as to the criteria for receiving rent relief during this extended response period (in addition to eligibility for JobKeeper) and any other enhancements/ directions that have been identified since the Delegated Legislation was first released.		December quarters 2020 to remain eligible for JobKeeper from 4 January 2021 to 28 March 2021.				
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 	provided that the tenant is an eligible tenant, and the lease (or an agreement to enter into the lease) is binding on the tenant	<ul style="list-style-type: none"> any lease subject to the <i>Leases (Commercial and Retail) Act</i> that was entered into before 7 April 	<ul style="list-style-type: none"> a lease of retail premises within the meaning of the <i>Retail Leases Act 2003</i> (Vic); 	<ul style="list-style-type: none"> tenancies where the premises, or the part of premises, to which the lease relates are being 	<ul style="list-style-type: none"> retail shop lease under the Retail and <i>Commercial Leases Act 1995</i>, or 	'small commercial lease' which is a: <ul style="list-style-type: none"> retail shop lease under the <i>Commercial Tenancy</i> 	<ul style="list-style-type: none"> retail shop leases or any other agreement (including sublease) under which business

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<p>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</p> <ul style="list-style-type: none"> any agreement regarding the leasing of premises or land for commercial purposes to 	<p>(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 	<p>2020 (including leases usually excluded from application of the Act under section 12(2)(a) and (b). (s 3(2) of the Declaration).</p>	<ul style="list-style-type: none"> 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>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> <p>(cl (a) of the 9 April 2020 Notice under Section 22 of the Principal Act).</p> <p><i>The COVID-19 Disease Emergency (Commercial Leases) Act 2020</i> covers commercial leases, meaning:</p> <ul style="list-style-type: none"> a lease to which Schedule 1 to the Fair 	<ul style="list-style-type: none"> a lease under the Landlord and Tenant Act 1936; 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 Pastoral Land Management and 	<p><i>(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.);</p> <ul style="list-style-type: none"> lease of premises that are used by a tenant who owns or operates a small business; or 	<p>premises are let or hired to a person (whether or not for exclusive possession or in writing); and</p> <ul style="list-style-type: none"> business leases that do not fall within the <i>Business Tenancies (Fair Dealings) Act</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>which the <i>Conveyancing Act 1919</i> applies.</p> <ul style="list-style-type: none"> 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 the same terms as the existing lease). does not apply to leases under the <i>Agricultural Tenancies Act 1990</i>. (r 3 of the Retail Regulation, r 1 of the Commercial Regulation). 	<p>the franchisee is also an affected lease.</p> <ul style="list-style-type: none"> does not include a lease under which premises are to be used wholly or predominantly for a farming business under the <i>Farm Business Debt Mediation Act 2017</i>. 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 		<ul style="list-style-type: none"> does not apply to a retail lease or a non-retail commercial lease if: <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 the aggregate turnover of the group of entities exceeds \$50 million; the premises may be used wholly or predominantly for agricultural, 	<p>Trading (Code of Practice for Retail Tenancies) Regulations 1998 (Tas) applies; or</p> <ul style="list-style-type: none"> 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 prescribed by Regulations; and a commercial lease in relation to premises being occupied wholly or 	<p>Conservation Act 1989 or lease under the Crown Land Management Act 2009. (r 3(1) of the Regulations).</p>	<ul style="list-style-type: none"> a lease where the tenant is an incorporated association under the <i>Associations Incorporation Act 2015</i>; or a lease prescribed by Regulations. (s 3 of the Principal Act). 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 	

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	<p>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> <p>(s 23(8) of the Principal Act and r 5 of the Regulation).</p>		<p>pastoral, horticultural, apicultural, poultry farming, dairy farming or similar activities; or</p> <ul style="list-style-type: none"> 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 Regulations).</p>	<p>predominantly for business purposes by a lessee on behalf of the lessor.</p> <p>(s 4, 5 and 9(2) of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</p>		<p>be a small business.</p> <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>	

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Eligible Tenant	<p>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>(r 4 of the Retail Regulation, r 2 of the Commercial Regulation).</p>	<p>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 	<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>tenants that are:</p> <ul style="list-style-type: none"> employers who qualify for the JobKeeper scheme and are participants in the JobKeeper scheme; and SME entities. <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 	<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>(cl (b) and (c) of the 9 April 2020 Notice under Section 22 of the Principal Act).</p> <p>Under the <i>COVID-19 Disease</i></p>	<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 Regulations).</p> <p>A tenant will be taken to be suffering financial 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</p>	<p>tenants that:</p> <ul style="list-style-type: none"> have a turnover in the 2018-2019 financial year of less than \$50 million; and qualify for the jobkeeper scheme under the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth), section 7 or has at any time during the emergency period, satisfied the decline in turnover test set out in section 8 of those Rules. <p>(r 2 of the Regulations).</p>	

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	<ul style="list-style-type: none"> 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>million in the previous financial year.</p> <p>(s 13 of the Principal Act, s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).</p>	<p><i>Emergency (Commercial Leases) Act 2020</i></p> <p>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 Regulations, <p>even if any of the criteria ceases to apply to the person during</p>	<p>or on their own behalf).</p> <p>(r 3(5) of the Regulations).</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 		

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				<p>the financial hardship period. (s 6(1) of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</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>(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 a suffering financial hardship as a result of the COVID-19 pandemic.</p> <p>(r 9(3) and r 9(4) of the Regulations).</p>		

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					(s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).			
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 	<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 	<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 	<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; 	<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; 	<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 	<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 	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>by the tenant; and</p> <ul style="list-style-type: none"> turnover includes internet sales of goods and services. <p>(r 4 of the Retail Regulation, r 2 of the Commercial Regulation).</p>	<p>grant or assistance given by the Commonwealth, State or a local government to mitigate the effects of the COVID-19 emergency.</p> <p>(r 5(3) and 5(5) of the Regulation).</p>	<p>conducted by the tenant.</p> <p>(s 3(1) of the Declaration)</p>	<ul style="list-style-type: none"> 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); r 5 of the Regulations).</p>	<ul style="list-style-type: none"> 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>corporate) — the turnover of the group;</p> <ul style="list-style-type: none"> 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 Regulations).</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 	<p>conducted by the tenant at the land or premises that are the subject of the small commercial lease.</p> <p>(r 2(1) of the Regulations).</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
						<ul style="list-style-type: none"> a 12 month period or such lesser period determined by the Minister by notice in the Gazette. (r 3(1) of the Regulations).		
RENT RELIEF PROCESS								
Process to initiating rent relief	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	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. After the initiator's request is made, the parties must, as soon as practicable, give each other information relating to the request that is:	Either party may initiate, but the obligation is on the landlord to have engaged with 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.	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: <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 Regulations; and 	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. A party to a protected lease may request the other party to the lease to	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 prescribed period. (r 6 of the Regulations).	A tenant may request rent relief from the landlord. The request must in writing and accompanied by a statement that the lease is a small commercial lease and the tenant is an eligible tenant and sufficient and accurate information that evidences such facts and the reduction in the tenant's turnover that the tenant has experienced	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>terms of, the impacted lease. 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. As these evidentiary obligations were introduced under the <i>Retail and Other Commercial</i></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 includes:</p> <ul style="list-style-type: none"> a clear statement about the terms of the lease the initiator is seeking to negotiate; and a statement by the tenant that demonstrates why the lease is an affected lease, accompanied by 	<p>(s 6(1) of the Declaration)</p>	<ul style="list-style-type: none"> 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 landlord and the tenant in writing). 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</p>	<p>renegotiate the rent payable under the lease. A party to a protected lease must, if such request is made, renegotiate in good faith the rent payable under the lease. (s 12(1) and s 18 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</p>		<p>during the emergency period and is associated with the business conducted at the land or premises that are the subject of the small commercial lease.</p> <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.</p> <p>A landlord's offer must be in writing and in accordance with the principles set out in clause 7.</p> <p>[See below: <i>Factors to take into account when negotiating rent</i>]</p> <p>Following receipt of the landlords offer, the tenant and landlord</p>	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p><i>Leases (COVID-19 Amendment Regulation 2020</i>, they only extend to renegotiations commenced but not completed before the amendments commenced (on 3 July 2020). 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 Retail Leases Act 1994. Similarly, under the Commercial Regulation, the new obligations do not extend to proceedings which have commenced in a court. (r 7 and 13 of the Retail Regulation as amended by</p>	<p>supporting information and evidence, such as:</p> <ul style="list-style-type: none"> ▪ 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 		<p>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. 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 Regulations).</p>			<p>must negotiate with a view to agreeing on rent relief to apply during the emergency period. Rent relief under the Regulations may be given effect by the landlord and tenant by a written variation or any other written agreement between the landlord and tenant that gives effect to the rent relief, either directly or indirectly. (r 5, 6 and 8 of the Regulations).</p>	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>the Amendment Regulation, r 5 and 11 of the Commercial Regulation as amended by the Amendment Regulation).</p>	<p>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</p> <ul style="list-style-type: none"> ▪ 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 						

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
		<p>the franchisee, and any undertakings to pass those concessions or benefits on to the franchisee.</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 					

NSW	QLD	ACT	VIC	TAS	SA	WA	NT

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 response period and provide for no less than 50% of the rent reduction offered to be in the form of a waiver of rent and have regard to the factors set out in the row below.

On receiving the landlord's offer, the tenant and landlord must cooperate and act reasonably

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
		and in good faith in negotiating a reduction in the amount of rent payable under the lease for the response period, including any conditions relating to the reduction in rent. (r 14 and 15 of the Regulation).						
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 5(4) of the Commercial Regulation).</p> <p>[See comments in relation to the</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 response period; 	<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>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 	<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 	<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 Regulations; and the National Cabinet's code of conduct. 	<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 emergency period; the rent relief offered must be at least proportionate to the 	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
Leasing Principles]	<ul style="list-style-type: none"> the extent to which a failure to reduce the rent payable under the lease would compromise the tenant's ability to comply with the tenant's obligations under the lease, including the payment of rent; the landlord's financial position, including any financial relief provided to the landlord as a COVID-19 response measure; and if a portion of rent or another amount payable under the 	(s 4 of the Declaration). [See comments in relation to the Leasing Principles]	<p>Regulation 14(2));</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 	<p>whether the lease is about to expire;</p> <ul style="list-style-type: none"> 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; the leasing principles set out in the National Code; and any matters prescribed by Regulations. <p>[See comments in relation to the Leasing Principles]</p> <p>(s 12(2) and 18(3) of the <i>COVID-19</i></p>	<p>[See comments in relation to the Leasing Principles]</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 Regulations; the reduction in turnover of the business of the lessee during the prescribed period; whether the lessor has, during the prescribed period, agreed to waive recovery of any 	<p>reduction in the tenant's turnover that is associated with the business conducted at the land or premises that are the subject of the small commercial lease and the tenant has experienced during the emergency period;</p> <ul style="list-style-type: none"> unless otherwise agreed, the tenant's reduction in turnover is to be calculated using the principles of the decline in turnover test set out in the <i>Coronavirus Economic Response Package (Payments</i> 	

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	<p>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. (r 15(2)(c) of the Regulation).</p>		<p>outgoings charged, imposed or levied in relation to the premises. (r 10(4) of the Regulations).</p>	<p><i>Disease Emergency (Commercial Leases) Act 2020</i>. 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 <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</p>	<p>outgoings or other expense payable by a lessee under the lease;</p> <ul style="list-style-type: none"> ▪ 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; 	<p><i>and Benefits) Rules 2020</i> (Cth) section 8 (including any relevant alternative decline in turnover test determined under that section);</p> <ul style="list-style-type: none"> ▪ 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 	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT	
						<ul style="list-style-type: none"> ▪ 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. (r 6 and 9(8) of the Regulations).	50% of the relief is to be in the form of a waiver if failure to provide more 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; <ul style="list-style-type: none"> ▪ where the landlord is a tenant under a headlease and is provided rent relief under that 	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
							headlease, it must pass on the benefit of the rent relief to the tenant. (r 7 of the Regulations).	
Can a tenant seek rent relief more than once?	Silent.	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 response period. The above process applies, as if the party making the	Silent.	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 Regulations. However, a landlord's offer of rent relief is not required to provide that 50%	Yes, but no express right – rather, it is implied to the Regulations. 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 <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>	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	Yes, in two ways. Firstly, if, before the Regulations were adopted, the landlord and tenant have entered into an agreement so as to provide rent relief and the tenant believes that rent relief is less favourable than the rent relief that might be provided to the tenant under the Regulations, the tenant may make a request for rent relief under clause 5 of the Regulations and the landlord and tenant must follow the process set out in the	Silent.

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		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. (r 16 of the Regulation).		of the rent relief be in the form of a waiver. (r 11 of the Regulations).	do not apply to the parties. (r 5 of the Regulations).	or affect the operation of that agreement as it purports to operate after the designated period.	Regulations in relation to that request. (r 10 of the Regulations). 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 reached relating to rent relief under the Regulations, the tenant may make a further request for rent relief to the landlord and tenant must follow the rent relief process under clause 6 of the Regulation (r 10(3) of the Regulations)	
Confidentiality requirements	Silent.	A party to an eligible lease dispute must not	Silent.	A landlord or tenant under an eligible lease	A person must not divulge or communicate	A person must not divulge or communicate	A party must not disclose protected	Silent.

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<p>[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 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).</p>	<p>disclose protected information obtained under or as a result of the operation of the Regulation, other than:</p> <ul style="list-style-type: none"> ▪ with the consent of the person to whom the information relates; or ▪ 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 		<p>must not divulge or communicate protected information obtained under or in connection with the operation of the Regulations.</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 	<p>confidential personal information, confidential information relating to business processes or confidential financial information (including information about a prescribed factor in 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 	<p>personal information, information relating to business processes or financial information obtained in connection with a mediation under Regulations.</p> <p>Several exceptions apply which allow information to be divulged; with the consent of the person to whom the information relates; or in connection with the administration of the Act and Regulations; 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</p>	<p>information under or in connection with the operation of the Code.</p> <p>Several exceptions apply which allow information to be disclosed in good faith, including:</p> <ul style="list-style-type: none"> ▪ with the consent of the person to whom the information relates; ▪ to a professional adviser; ▪ to an actual or prospective financier; ▪ under written law; ▪ for the purposes of making a request under section 18 of the Principal Act; 	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<ul style="list-style-type: none"> 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>		<ul style="list-style-type: none"> or under law; or for the purposes of any proceeding in a court or tribunal. <p>(r 19 of the Regulation).</p>	<ul style="list-style-type: none"> n 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</p>	<p>authorised or required by law. (r 8(6) of the Regulations).</p>	<ul style="list-style-type: none"> for the purposes of resolving a dispute with the assistance of the Small Business Commissioner; for the purposes of an alternative dispute resolution proceeding under the <i>Small Business Development Corporation Act 1983</i> in respect of a dispute; for the purposes of making an application under section 16(1) of the Principal Act; for the purposes of proceedings 	

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					units for an individual) applies. (s 16 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).		under the Principal Act in the State Administrative Tribunal and for the purposes of proceedings in a court. (r 13 of the Regulations).	
ADDITIONAL POINTS								
Prohibited enforcement actions	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: <ul style="list-style-type: none"> eviction of the lessee from premises or land the subject of the commercial lease; exercising a right of re-entry to 	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: <ul style="list-style-type: none"> recovery of possession; termination of the lease; eviction of the tenant; 	Means taking action under the lease or starting a proceeding for any of the following: <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; recovery of the premises or land; 	Means taking action, or attempting to take action, under the eligible lease, for any of the following: <ul style="list-style-type: none"> recourse to any security; re-entry to, or recovery of, the premises; or eviction of the tenant. (r 9 and 18 of the Regulations).	A 'prohibited lessor action' includes: <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 seeking orders or issuing proceedings 	Means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court for any of the following: <ul style="list-style-type: none"> eviction of the lessee from premises the subject of the commercial lease; exercising a right of re-entry to premises the subject of the 	Means action under the small commercial lease or for commencing proceedings for any of the following: <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 subject of the small 	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.

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<ul style="list-style-type: none"> premises or land the subject of the commercial lease; ▪ recovery of the premises or land; ▪ distraint 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 	<ul style="list-style-type: none"> ▪ 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 	<ul style="list-style-type: none"> ▪ distraint 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; 		<p>in a court in relation to a protected lessee,</p> <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; 	<p>commercial lease;</p> <ul style="list-style-type: none"> ▪ recovery of land; ▪ distraint 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; 	<p>commercial lease;</p> <ul style="list-style-type: none"> ▪ recovery of land; ▪ distraint 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 	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>pursuant to a guarantee under the commercial lease;</p> <ul style="list-style-type: none"> 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, r 1 (definition of "prescribed action") of the Commercial Regulation).</p>	<p>person under a guarantee under the lease;</p> <ul style="list-style-type: none"> 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"> 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>		<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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 Regulations).</p>	<p>person pursuant to a guarantee under the small commercial lease (including making a demand on a bank guarantee);</p> <ul style="list-style-type: none"> 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). A landlord is prohibited from increasing any rents that are not determined by reference to turnover during the emergency period.</p> <p>(s 11 of the Principal Act).</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					<p>person, pursuant to a guarantee, or indemnity, relating to the lessee's obligations under the lease;</p> <ul style="list-style-type: none"> ▪ 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. 			
When a landlord may take enforcement action	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	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	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	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	Lessors may take a prohibited lessor action unless the lease is a protected lease and the grounds of breach of the lease during the	A landlord under a commercial lease may take any prescribed action against a tenant, unless the tenant is an affected lessee and the grounds of breach of the lease during the	A landlord may take prohibited action during the emergency period on the ground of a breach by the tenant that occurs during the emergency period unless the	A landlord may take enforcement action after having negotiated in good faith for 30 days.

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>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.</p> <p>(r 7(1) of the Retail Regulation, r 5(1) of the Commercial Regulation).</p> <p>Also see heading 'Process to initiating rent relief' where an impacted tenant has failed to comply with the 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</p>	<p>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 	<p>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>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 Regulations).</p> <p>The prohibition against taking enforcement</p>	<p>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 	<p>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 Regulations).</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 prescribed period agreed by the parties under a mediation under the Regulations or</p>	<p>breach consists 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 Regulations. <p>(s 9 of the Principal Act)</p> <p>An act or omission of a tenant during the emergency period that is required under a written law in response to the COVID-19 pandemic is not to be regarded</p>	

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<p>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. (r 6(5) of the Retail Regulation, r 4(5) of the Commercial Regulation). Nothing in Regulations prevents a lessor and an impacted lessee agreeing to the parties taking any action in relation to the commercial lease (including the</p>	<p>landlord and the tenant;</p> <ul style="list-style-type: none"> 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 Regulations in relation to the negotiations; or on a ground that is not related to the effects of the COVID-19 emergency. 		<p>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 Regulations). Note: at the end of the first dot point above, the word 'or' appears in the Regulation. It is believed to</p>	<ul style="list-style-type: none"> any other act or omission of a kind prescribed by Regulations. (s 7 and 13 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>). <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 	<p>determined by the Court under the Regulations, and the failure to pay rent constitutes a breach of the agreement or order of the Court (as the case may be) (r 7(2) of the Regulations).</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. (r 7(3) of the Regulations).</p> <p>Any prescribed action taken during the period between 30 March 2020 and 9 April 2020 (inclusive) against a tenant</p>	<p>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. (s 10 of the Principal Act).</p>	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>lessor taking any prescribed action or the parties agreeing to terminate the commercial lease).</p> <p>(r 6(6) of the Retail Regulation, r 4(6) of the Commercial Regulation).</p>	<p>(r 10 and 12(2) of the Regulation).</p> <p>An act or omission of a tenant under a COVID-19 response measure or a 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</p>		<p>be an error as it should read 'and'.</p>	<p>Commonwealth; or</p> <ul style="list-style-type: none"> 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 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>suffering financial hardship as a result of the COVID-19 pandemic will be stayed or suspended until the end of the prescribed period (30 September 2020).</p> <p>(r 10 of the Regulations).</p>		

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<p>Landlord started a proceeding for a lease dispute or started action that would constitute taking a prescribed action (r 12) which has not concluded, that proceeding or action is stayed or suspended until the response period ends (30 September 2020).]</p> <p>(r 48 of the Regulation).</p>			<p>(s 11 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</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</p>			

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					the end of the financial hardship period. (s 10 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).			
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</i>	Implemented (r 6(1)(a) of the Retail Regulation, r 4(1)(a) of the Commercial Regulation).	Implemented (r 12(1) of the Regulation). [QCAT or a court may award costs against the landlord in a proceeding relating to a prescribed action taken by a landlord in contravention with the Regulation.]	Implemented (s 4 and schedule 1 of the Declaration).	Implemented (r 9 of the Regulations).	Implemented (cl (d) of the Notice under Section 22 of the Principal Act). Implemented (s 13(a) of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).	Implemented (r 7(1) of the Regulations).	Implemented (s 9 of the Principal Act).	Silent.

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<i>recovery period).</i>			[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.]	[Mandatory where the tenant complies with the Regulations 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.]				
Lease compliance Principle 2 (tenants must honour leases) <i>Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement</i>	Implemented (r 10 of the Retail Regulation, r 8 of the Commercial Regulation).	Not implemented.	As above.	Partially implemented (r 8 of the Regulations). [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	Not implemented.	Implemented (r 6 of the Regulations).	Not implemented.	

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<i>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>				the Regulations apply.]				
<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</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the 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</i></p>	<p>Partially implemented (r 15(2)(c)(i) of the 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 response period. However, this is just one of a number of considerations to</p>	As above.	<p>Implemented (r 4(d)(i), 10 and 11 of the Regulations).</p> <p>[There is no requirement in the Regulations 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>Partially implemented (s12(2) and 18 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</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</p>	<p>Implemented (r 6 and r 9(5)-(8) of the Regulations).</p> <p>[There is no strict requirement that landlord's 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 Regulations do require parties to negotiate the rent payable under, and other terms of, their lease having regard to, inter alia, the</p>	<p>Implemented (r 7(3), (4) and (5) of the Regulations).</p> <p>[Under r 7(3) that Rent Relief offered by the landlord must be at least proportionate to the reduction in the tenant's turnover. For the purposes of r 7(3) (unless otherwise agreed by the parties), the tenant's turnover is to be calculated using the principles of the decline in turnover test set out in section 8</p>	Silent.

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<p><i>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><i>deferrals of rent, proportionate to a lessee's reduction in turnover.</i></p>	<p>be taken into account.]</p>			<p>prescribed by Regulations.] [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:</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 	<p>provisions the National Cabinet's code of conduct, and a reduction in turnover of the business of the tenant during the 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.] [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,</p>	<p>of the <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 r 7(3)(a) and (b).] [Noting under r 7(8), 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</p>	

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					<p>being held over or whether the lease is about to expire; and</p> <ul style="list-style-type: none"> 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.] 	and other terms of, the commercial lease during the prescribed period having regard to this principle.]	landlord must pass on the benefit of the rent relief to the tenant under the small commercial lease.]	
<p>Rent waivers</p> <p>Principle 4 (rental waivers no less than 50% of the total rental reduction)</p> <p><i>Rental waivers must constitute no less than 50% of the total reduction in rent</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Implemented (r 15(2)(b) of the Regulation).</p> <p>[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.]</p>	As above.	<p>Implemented (r 10(4)(b) of the Regulations).</p> <p>[The landlord and tenant can agree otherwise in writing. However, the landlord must offer this to the tenant.]</p>	As above.	As above.	<p>Implemented (r 7(6) and (7) of the Regulations).</p> <p>[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</p>	Silent.

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<p><i>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 may waive the requirement for a 50% minimum waiver by agreement.</i></p>							<p>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.]</p>	

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<p>Amortisation of rent deferral</p> <p>Principle 5 (amortisation of rental deferrals)</p> <p><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></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Partially implemented (r 17 of the Regulation).</p> <p>[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.]</p>	<p>As above.</p>	<p>Implemented (r 16(2)(b) of the Regulations).</p> <p>[The landlord and tenant can agree otherwise in writing.]</p>	<p>As above.</p>	<p>Partially implemented (r 6 and r 9(5)(e) of the Regulations).</p> <p>[The Regulations empower the Magistrates Court to make an order to defer the payment of rent under an affected lease for a specified period not exceeding 24 months from the day on which the order is made.]</p> <p>[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 prescribed period having</p>	<p>Implemented (r 9(3) and (4) of the Regulations).</p> <p>[The landlord and tenant can agree otherwise.]</p>	<p>Silent.</p>

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
						regard to this principle.]		
<p>Statutory charges</p> <p>Principle 6 (landlords must pass on reduction in statutory charges)</p> <p><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 the terms of the lease.</i></p>	<p>Implemented (r 6(4) of the Retail Regulation, r 4(4) of the Commercial Regulation).</p>	<p>Implemented (r 15(2)(c)(iv) of the Regulation).</p> <p>[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.]</p>	<p>As above.</p>	<p>Implemented (r 15 of the Regulations).</p> <p>[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.</p> <p>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</p>	<p>Implemented (r 6 of the Regulations).</p> <p>[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</p>	<p>Partially implemented in respect of land tax for affected lessees (r 7(5) and 7(7) of the Regulations).</p> <p>[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 prescribed period having regard to this principle.]</p>	<p>Implemented (r 12 of the Regulations).</p> <p>[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.</p> <p>If the tenant has already paid an amount greater than the tenant's proportional share of the reduced outgoing, the landlord must reimburse the</p>	<p>Silent.</p>

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				soon as possible.]	statutory charge or insurance premium payable by the lessor has been reduced.] [Parties to a protected lease can agree in writing that this does not apply.]		excess amount to the tenant as soon as possible.]	
<p>Loan repayments</p> <p>Principle 7 (landlords must share benefits received due to deferral of loan payments)</p> <p><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</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Implemented (r 15(2)(c)(iii) of the Regulation).</p> <p>[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.]</p>	As above.	<p>Not implemented.</p> <p>[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 Regulations apply (r 8 of the Regulations).]</p>	<p>Partially implemented (s12(2) and 18 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</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 Regulations.]</p>	<p>Implemented (r 6 and r 8(8)(e) of the Regulations), in that 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.</p> <p>[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</p>	Silent.	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>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>					<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 	of, the commercial lease during the prescribed period having regard to this principle.]		

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					<p>whether the lease is about to expire; and</p> <ul style="list-style-type: none"> 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.] 			
<p>Waiver of expenses</p> <p>Principle 8 (landlords should seek to waive recovery of any other expenses)</p> <p><i>Landlords should where appropriate seek to waive recovery of any other expense</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Implemented (r 15(2)(c)(iv) and 19 of the Regulation).</p> <p>[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,</p>	As above.	<p>Implemented (r 8 and 14(2) of the Regulations).</p> <p>[This is not mandatory. However, the landlord has a good faith obligation to consider this where tenants are unable to operate from the premises.]</p>	As above.	<p>Implemented (r 6 and r 8(8)(c) of the Regulations), in that a Court must have regard to whether a landlord has agreed to waive recovery of any outgoings or other expenses payable by a tenant under the lease in making an order granting</p>	<p>Implemented (r 11 of the Regulations).</p>	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>(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>		insurance premiums or other outgoings, an offer of rent relief must have regard to any reduction in, or waiver of, the amount payable.]				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 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</i>	Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) 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). [The agreement between the parties must not require payment of the deferred rent to commence until the day after the end of the response period, and the payment	As above.	Implemented (r 16 of the Regulations). [This is mandatory. However, the landlord and tenant may agree otherwise in writing.]	As above.	Implemented (r 6 of the Regulations). [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	Implemented (r 9(2) of the Regulations). [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	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>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 the existing lease expiring, and taking into account a reasonable subsequent recovery period.</i>		must be amortised, using a method agreed between the parties, over a period of at least 2 years but no more than 3 years. The landlord may continue to hold any security deposit given to the landlord until the deferred rent has been paid.]				of, the commercial lease during the prescribed period having regard to this principle.]	lease immediately before the emergency 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 emergency period ends or the expiry of the term of the lease. However, the	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
							landlord and tenant may agree otherwise in writing.]	
<p>Interest and charges</p> <p>Principle 10 (no fees/charges/interest should be applied in respect of rental waivers or deferrals)</p> <p><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></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Implemented (r 17(2)(c) of the Regulation).</p> <p>[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.]</p>	As above.	Implemented (r 17 of the Regulations).	<p>Implemented (s 7(2)(g), 13 and 18(2) of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</p> <p>[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'.]</p> <p>[Other than as set out above,</p>	<p>Implemented (r 6 and r 7(1) of the Regulations).</p> <p>[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'.]</p> <p>[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</p>	Implemented (s 9 of the Principal Act).	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					this is not mandatory, however parties to a protected lease must renegotiate the rent payable under the lease in good faith,]	payable under, and other terms of, the commercial lease during the prescribed period having regard to this principle.]		
<p>Security</p> <p>Principle 11 (landlords must not draw on tenants' security for non-payment of rent)</p> <p><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 pandemic and/or a</i></p>	Implemented (r 6(1)(a) of the Retail Regulation, r 4(1)(a) of the Commercial Regulation).	Implemented (r 9 and 12 of the 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 response period.] [Note, despite the terms of the lease, if there is a deferral of rent the landlord may hold any security	As above.	Implemented (r 9(4) and 18(4) of the Regulations). [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.]	Implemented (s 7(2)(h) and 13 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>). [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	Implemented (r 6 and r 7(1) of the Regulations), in that 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	Implemented (s 9 of the Principal Act).	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>reasonable subsequent recovery period.</i>		until the deferred rent has been paid (r 17(3) of the Regulation).]			in respect of 'When a landlord may take enforcement action'.]	enforcement action'.		
<p>Lease extension</p> <p>Principle 12 (tenant should be provided opportunity to extend lease for equivalent period of rental waiver or deferral)</p> <p><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</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation, r 5(4)(b) of the Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]</p>	<p>Implemented (r 18 of the Regulation). [However, under s 18(4) 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</p>	As above.	<p>Implemented (r 13 of the Regulations). [Parties can agree in writing that this does not apply.]</p>	<p>Partially implemented (s 15 and 18 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>). [Under section 15 of the Act, a lessor must extend the period of the lease on the request of a protected lessee:</p> <ul style="list-style-type: none"> ▪ until the end of the financial hardship period; or ▪ if agreed between the parties, a longer period. <p>Several exceptions apply:</p>	<p>Implemented (r 6 and r 8(9) of the Regulations). [In making an order to defer the payment of rent under an affected lease 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</p>	<p>Implemented (r 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</p>	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>the recovery period after the COVID-19 pandemic concludes.</i>		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).]			<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 	of, the commercial lease during the prescribed period having regard to this principle.]	land or premises.]	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>establishment of, or intention to continue, in 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 Regulations.] <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</p>			

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>are to renegotiate the rent payable, having regard to the leasing principles set out in the Code and any matters prescribed by Regulations.</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 			

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					<p>hardship of the lessee and of the lessor;</p> <ul style="list-style-type: none"> ▪ 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.] 			
<p>Rent increase freeze</p> <p>Principle 13 (landlords to</p>	<p>Implemented (r 6(2) and 6(3) of the Retail Regulation, r 4(2) and 4(3) of the</p>	<p>Implemented (r 13 of the Regulation). [The effect of this regulation is that any rent review</p>	<p>As above.</p>	<p>Implemented (r 12 of the Regulations). [This effectively suspends all fixed, consumer</p>	<p>Implemented (cl (e) of the Notice). Implemented (s 17 of the <i>COVID-19 Disease Emergency</i></p>	<p>Implemented (r 7(4) of the Regulations).</p>	<p>Implemented (s 11 of the Principal Act). [This effectively suspends all fixed, consumer</p>	<p>Silent.</p>

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>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>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>that is scheduled to take place during the response 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 response period ends.]</p>		<p>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><i>(Commercial Leases) Act 2020</i>, 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 Regulations provide an exception for when rent or a component of rent is determined by reference to 'turnover', which expressly:</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 if a tenant is an affected lessee.]</p>	<p>price index, market review and other rent increases from coming into effect during the emergency period, but does provide an exception when rent or a component of rent is determined by reference to turnover.]</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					<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>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</i></p>	Implemented (r 6(1)(c) of the Retail Regulation, r 4(1)(c) of the Commercial Regulation).	Implemented (r 12(1)(c) of the Regulation). [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 response period.]	As above.	Implemented (r 18 of the Regulations). [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	Implemented (s 7, 13 and 14 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>). [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	Implemented (r 6 and r 7(1) of the Regulations), 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	Implemented (s 9(b)) of the Principal Act). [A landlord cannot take 'prohibited action' during the emergency 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	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>opening hours or cease to trade due to the COVID-19 pandemic.</i>				closes the premises and ceases to carry out any business at the premises.]	<p>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 the State or the Commonwealth <p>[Refer to comments above in respect of</p>	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.	business carried on there, not being open for business at hours or times specified in the small commercial lease].	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>'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 			

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>indicating that it may cease to trade;</p> <ul style="list-style-type: none"> ▪ 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 			

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					trading or carrying on a trade or profession.]			
MEDIATION								
<p>Mediation</p> <p>Additional Principle - Parties should be referred to mediation in regards to 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/commercia</i></p>	<p>Implemented (part 8 of Retail Regulation, part 6 of the Commercial Regulation).</p> <p>[Under the <i>Retail Regulation, Part 8 of 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</p>	<p>Implemented (parts 3 & 5 of the Regulation).</p> <p>[Before starting mediation under the Regulation, for an affected lease dispute or small business lease dispute (each an eligible lease dispute), the parties 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>As above.</p> <p>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.</p>	<p>Implemented (part 6 of the Regulations).</p> <p>[The mediation regime under the Regulations mirrors the regime under the Dispute Resolution 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 Regulations apply) must first be referred to the Victorian Small Business Commission (VSBC) for mediation before a party can</p>	<p>Implemented (part 6 of the <i>COVID-19 Disease Emergency (Commercial Leases) Act 2020</i>).</p> <p>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 obligation under the Act, by direct negotiation.</p> <p>If this is unsuccessful, either party is able to apply to the mediation provider for</p>	<p>Implemented (r 8 of the Regulations).</p> <p>[A party to a commercial lease may apply to the Commissioner (Small Business Commissioner 'SBC') for mediation of a 'relevant dispute' (as defined in r 3(1) of the Regulations which includes a dispute in relation to the provision of rent relief during the 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>[The SBC may exercise any</p>	<p>Implemented (Part 5 of the Principal Act).</p> <p>[The parties cannot commence proceedings in the State Administrative Tribunal without either agreeing that the matter should not be referred to the Small Business Development Commissioner 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, or that it would not be</p>	<p>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 for alternative dispute resolution.</p>

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p><i>Leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Champions/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>and Administrative Tribunal.]</p> <p>[Under the <i>Commercial Regulation</i>, the Office of the Small Business Commissioner NSW is to convene a mediation and the parties must first seek to mediate the matter.</p> <p>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</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 this 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</p>		<p>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.</p>	<p>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>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 ▪ if mediation would not be reasonable in the circumstance s—that fact; or ▪ if a party refused to participate, or did not participate in 	<p>reasonable in the circumstances to commence ADR in respect of the dispute, or that ADR has failed.]</p>	

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>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, financial information in order to demonstrate the reduction in turnover or revenue.]</p> <p>[The Regulations do not exclude the rules of common law and equity applying in</p>	<p>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 SBC must nominate a mediator to mediate the affected lease</p>		<p>Parties can choose to go to either VCAT or the Court to have the dispute under the Regulations 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 giving of</p>		<p>good faith, in mediation— that fact.]</p> <p>[A party to a commercial lease may only to the Court for resolution of a relevant dispute in relation to a commercial lease if the SBC has issued a certificate under Regulation 8(4).]</p>		

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>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. (r 11 of the Retail Regulation and r 9 of the Commercial Regulation).]</p>	<p>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</p>		<p>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 Regulation 20. However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the</p>				

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<p>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</p>		<p>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 Regulation 10(4)(d); and ▪ any certificate issued by the Small Business Commission under Regulation 23(1) that mediation under Part 6 of the Regulations has failed, or is unlikely to resolve the dispute.] 				

NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<p>conference is not admissible in a proceeding before a court or tribunal.]</p> <p>[Parties have a right to apply to QCAT if they 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 (28 May 2020) a dispute notice for a retail tenancy dispute was lodged under the Retail Shop Leases Act, then part 8 of that legislation continues to apply for the retail tenancy</p>						

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
		dispute. However, this does not prevent a party from starting mediation under part 3 of the Regulation.]						

Land Tax relief

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
Scheme	<ul style="list-style-type: none"> Reduction of up to 25% of 2020 land tax. Deferral of outstanding land tax for up to three months. 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 land tax for certain eligible properties. 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 can apply for commercial tenancy relief in the form of a rates rebate. 	<ul style="list-style-type: none"> Reduction of 25% of 2020 land tax. Deferral of remaining 2020 land tax liability until 31 March 2021. A new Coronavirus Relief Deputy Commissioner will be established at the State Revenue Office to manage these land tax relief claims. 	<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 arrangement if they are experiencing financial hardship paying their land tax. 	<ul style="list-style-type: none"> Reduction of up to 25% of 2019-20 land tax. 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 equivalent of up to 25% of 2019-20 land tax liability (including the Metropolitan Region Improvement Tax (MRIT) component) for certain qualifying property. Landowners can apply for an interest-free payment arrangement and for late payment penalties to be waived in relation to the payment of their land tax. 	<ul style="list-style-type: none"> The NT does not impose land tax.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
Eligibility	<p>To be eligible for the 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); the tenant's ability to pay their normal rent must be affected by COVID-19 (defined as a 30% revenue drop); 	<p>To be eligible for the land tax reduction, 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 the coronavirus (COVID-19) pandemic; landlord will provide rent relief to the affected tenant(s) of an amount at least commensurate with the land tax rebate; and landlord will comply with the 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 	<p>To be eligible for the 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); the tenant's ability to pay their normal rent must be affected by COVID-19; tenant must be eligible for the JobKeeper 	<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; and the owner of the land must have been adversely financially impacted during the pandemic period, in a way that is 'unexpected and not insignificant.' <p>It appears that relief may be available to not only landlords, but also to qualifying land owners that run an active</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"> 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; landlord must demonstrate that they 	<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) 	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<ul style="list-style-type: none"> ▪ landlord must demonstrate that they have provided a rent reduction to the affected tenant(s) by at least as much as the land tax reduction; ▪ landlord must not require the tenant to pay back the rent reduction at a later date; and ▪ the land tax is directly related to the property for which rent has been reduced. <p>Note the NSW eligibility criteria is similar to Victoria, except</p>	<p>Note that there are alternate criteria that can be satisfied by landowners who are unable to attract tenants due to COVID-19 and require relief to meet their financial obligations.</p>	<p>income as a result of COVID-19.</p> <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> <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>Payment; and</p> <ul style="list-style-type: none"> ▪ landlord must demonstrate that they have provided genuine rent relief to the affected tenant(s) by at least an amount equivalent to the land tax reduction. <p>Note that there are alternate criteria that can be satisfied by landowners who are unable to attract tenants due to COVID-19 and require relief to meet their financial obligations.</p>	<p>business on their land.</p> <p>Note that the Tasmania SRO has stated that further administrative details will be published on this relief measure.</p>	<p>have provided rent relief to the affected tenant(s) by at least as much as the land tax reduction between 30 March 2020 and 30 October 2020;</p> <ul style="list-style-type: none"> ▪ landlord must not have an outstanding land tax debt prior to 2019-20; and ▪ the land tax is directly related to the property for which rent has been reduced. 	<p>suffered a 30 per cent 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;</p> <ul style="list-style-type: none"> ▪ landlord has fully waived tenant's rent for three months or equivalent (e.g. waiver of 50% over six month period) starting from a date between 1 March 2020 and 31 August 	

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	that the affected tenant does not need to be eligible for the JobKeeper Payment.						<p>2020, or from a date thereafter (but before 31 May 2020);</p> <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; and ▪ landlord cannot increase outgoings charges for the six month period commencing when the rent waiver commenced 	

Foreign Investment Review Board (FIRB)

Commonwealth Legislation	<ul style="list-style-type: none"> ▪ Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 ▪ Foreign Acquisitions and Takeovers Regulation 2015 ▪ Foreign Acquisitions and Takeovers Act 1975 ▪ FIRB Guidance Note 53
Period of Coverage	<ul style="list-style-type: none"> ▪ 10:30pm 29 March 2020, no set end date. (Schedule 1 Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020).
Applies to	<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 the coronavirus crisis 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 the coronavirus crisis 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.
Threshold	<ul style="list-style-type: none"> ▪ The monetary screening thresholds for all foreign investments (including interests in land, shares and businesses) have been reduced to \$0. (Schedule 1 <i>Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020</i>, Part 4 <i>Foreign Acquisitions and Takeovers Regulation 2015</i>).

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 \$26,200 down to \$2,000 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>). ▪ FIRB applications may now take up to 6 months to process instead of 30 days (the previous statutory timeframe, although this was rarely met). FIRB has indicated that it will try to process routine leasing applications quickly and has increased its resourcing to assist in this regard.
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>).
<p>*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.</p>	

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