

This article outlines the newly established 'rent relief package', aimed at reducing the impact of COVID-19 on retail and commercial tenants. Due to the downturn in business heavily affecting many business owners, the Australian Government has announced on 7 April 2020 that 'rental waivers and deferrals' will be implemented in ongoing retail and commercial leases.



A. WHAT DOES THE RENT PACKAGE INCLUDE?

The two main types of benefit provided by the new rent relief package are reductions in rent by way of:

1. **Waivers** - Landlords are to reduce the rent amount proportionate to the reduction in business of the tenant. The amount waived (rent reduction) must be at least 50% of the reduction in the tenant's business.¹ For example, if a tenant's business has been reduced by 30% due to the COVID-19 situation, a normal rent amount of \$10,000.00 per month would need to be reduced by at least 15%, ie the new rent would be \$8,500.00 or less.
2. **Deferrals** - If tenants are still unable to pay the reduced rent, they can elect to defer the payment until they are financially able to afford it. The deferral can last until the end of the lease term, and must be for at least 24 months unless otherwise agreed.² Interest does not apply during this deferral. For example, if your lease ends in two months' time, you can still defer for up to 24 months. Alternatively, if your lease ends in three years' time, you can defer payment until the termination date (ie pay in three years from now).

Additionally, landlords cannot terminate leases or draw on their tenants' security during this COVID-19 pandemic.³

The official media statement from the Prime Minister Scott Morrison is available to read here: <https://www.pm.gov.au/media/update-coronavirus-measures-070420>.

B. WHO IS ELIGIBLE FOR THE RENT RELIEF PACKAGE?

The Tenants that can obtain a waiver or deferral of rent as above are retail and commercial tenants that are small to medium sized businesses with an annual turnover of less than \$1 billion. To get these rent relief package, these businesses need be registered under the Australian Government's JobKeeper program (have a reduction in business of at least 30%).

¹ ABC News, 'Scott Morrison announces rent relief package for commercial tenants affected by coronavirus', Jessica Warriner, 7 April 2020, <https://www.abc.net.au/news/2020-04-07/scott-morrison-commercial-tenants-coronavirus-measures/12129178>.

² National Cabinet Mandatory Code of Conduct, Legal Principles 5.

³ Commercial Real Estate, 'Prime Minister Scott Morrison confirms mandatory code for commercial tenants and landlords during coronavirus crisis', Sue Williams, 7 April 2020, <https://www.commercialrealestate.com.au/news/prime-minister-scott-morrison-confirms-mandatory-code-of-conduct-for-commercial-tenants-and-landlords-during-coronavirus-crisis-947196/>.

The current rent relief package is aimed at relieving the hardship on retail and commercial tenants only. The National Cabinet has stated that the States and Territories may implement their own regulations on how to protect residential tenants.⁴ There exists a six-month moratorium on eviction of retail, commercial and residential tenants.⁵

C. WHAT LAWS APPLY?

The Australian Government has created and relies on the 'National Cabinet Mandatory Code of Conduct' addressing retail and commercial leasing principles applicable to small-medium enterprises (SMEs).

This Code of Conduct will be the basis of legislation or regulations developed by individual States and Territories as necessary.

The overarching principles of the Code of Conduct include the following:

- Landlords and tenants have a common interest in allowing business continuity;
- Landlords and tenants are to act in good faith and in an honest, transparent manner; and
- Leases are to be dealt with on a case-by-case basis, depending on the downturn of business as a result of the COVID-19 pandemic and when the lease is set to expire.

D. WHAT IF MY LANDLORD DOES NOT PROVIDE RENT RELIEF?

The Australian Government encourages landlords and tenants to communicate and negotiate between themselves regarding rent reduction or deferral.

However, if a dispute arises, the matter should be referred to the appropriate leasing dispute resolution processes for the applicable State or Territory (eg the Small Business Commissioner). In order to maintain good relations between landlords and tenants, binding mediation is the encouraged form of dispute resolution.

Following the 'rent relief package' announcement, the CEO of Scentre Group, Peter Allen said his leasing team was talking to all 3,600 tenants in its Westfield shopping centre portfolio, and would assess each one on a case-by-case basis. He also said, "If you are a retailer and know you can get staffing costs paid through JobKeeper ... and we are working with SMEs [small and medium enterprises] ... it makes sense to me to open to keep staff employed ..." "Money is a merry-go-round and retail is such a big part of the GDP."⁶

Peter Allen said 86 per cent of the tenants in its Westfield mall portfolio were allowed to trade but of those, only 39 per cent were open. "The government said some businesses must close, such as gyms, nail bars and cinemas ... that's only 14 per cent of our tenants so potentially a lot of other stores could open," Mr Allen said.⁷

This shows a dichotomy in the attitudes of the landlord and the tenant. Still, the landlord and the tenant are expected to arrive at a compromise, or a 'binding mediation' during this COVID-19 situation.

For more information on related matters, you may wish to read the following articles:

1. [Leases \(when a tenant does not pay rent\):](#)

Discusses options of a commercial landlord.

⁴ Australian Financial Review, 'SMEs have two years to pay deferred rent', Andrew Tillett and Sue Mitchell, 7 April 2020, <https://www.afr.com/politics/federal/commercial-tenants-to-get-half-of-rent-reduction-waived-under-new-code-20200407-p54ht1>.

⁵ Tenants' Union of NSW, 'Evictions banned? Rent relief? - COVID19 update', 30 March 2020, <https://www.tenants.org.au/news/covid19-update>.

⁶ Sydney Morning Herald, 'Westfield mall landlord sees no reason shops closed amid confusing messages', Carolyn Cummins, 9 April 2020.

⁷ Ibid.



2. **[Negotiating Retail Leases](#)**: Discusses commercial leasing of shops.
3. **[Neighbours and Encroachments](#)**: This article discusses encroachments and details what they are. Additionally, it addresses how an owner may determine whether there is an encroachment and how to deal with one.
4. **[Residential Tenancy Agreements](#)**: For landlords and tenants, a residential tenancy agreement is an effective way of setting out the standard terms that are to govern each party's rights and obligations. This agreement ensures transparency and clarity of terms between landlord and tenant and is enforceable in law.
5. **[Retail and Commercial Leases](#)**: Discusses the differences and similarities between Retail Leases and Commercial Leases.
6. **[Strata Dispute Resolution Mechanisms](#)**: This article outlines the type of dispute resolution mechanisms available to help settle strata disputes.

Comasters can advise you on whether the rent relief package affects you, and represent or assist you in negotiations.

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