



FACT SHEET – PROPERTY

The COVID19 crisis financial response has predominantly been directed to businesses with the focus being on maintaining employment to the greatest extent possible. There has been growing concern among landlords and tenants on the ability to continue to maintain lease arrangements and the National Cabinet has responded with recent announcements concerning a moratorium on evictions and a Code of Conduct for arrangements between Landlords and SME tenants. These matters are detailed further below.

Moratorium on Evictions

On 29 March 2020, the National Cabinet announced a 6-month moratorium on evictions for commercial and residential tenancies in financial distress who are unable to meet their lease commitments due to the impact of COVID-19. Landlords and tenants not significantly affected by COVID-19 are expected to honour their lease and rental agreements. This has not yet been enacted into law by the States or Territories.

Mandatory Code of Conduct

On 7 April 2020, the National Cabinet announced that the states and territories will implement a mandatory Code of Conduct in the commercial property sector. State and Territories are expected to subsequently legislate the code into law. A copy of the code can be found [here](#).

Who will it to apply to?

The code applies from 3 April 2020 to all commercial tenancies (including retail, office and industrial) where the tenant is suffering financial stress or hardship as a result of the COVID-19 pandemic, defined by their eligibility for the Commonwealth Government's JobKeeper programme, up to an annual turnover up to \$50 million. See [here](#) for JobKeeper eligibility.

How does the code apply?

The following set of principles must be followed:

1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement.
3. Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, based on the reduction in the tenant's trade during the COVID-19 pandemic period (or reasonable subsequent recovery period).
4. Rental waivers must constitute no less than 50% of the total reduction in rent payable.
5. 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.
6. 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.
7. A landlord should seek to share any benefit it receives due to deferral of loan payments, with the tenant in a proportionate manner.



8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, during the period that tenant is not able to trade.
9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant.
10. No fees, interest or other charges should be applied to the rent waivers or rent deferrals.
11. Landlords must not draw on a tenant's security (cash bond, bank or personal guarantee) for the non-payment of rent.
12. The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and deferral period.
13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic period (or reasonable subsequent recovery period).
14. Landlords must not apply any prohibition or levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

Practical Example

A commercial tenant who qualifies for the JobKeeper Programme, business turnover has reduced by 40% due to COVID-19 pandemic. The tenant's current leasehold is \$60,000+GST annually, with payments of \$5,000+GST to be paid monthly.

The tenant would be eligible for a total 40% rent waiver and deferral based on the reduction of turnover. At least half of this (20%) would need to be a rent waiver and with the balance being a rent deferral, which is to be recouped over at least 24 months in a manner negotiated by landlord and tenant.

If the tenant was to receive a 20% rent waiver, the tenant would receive a \$1,000+GST rent waiver and a \$1,000+GST rent deferral per month during the COVID-19 pandemic period (or reasonable subsequent recovery period). The \$1,000+GST rental deferral would need to be repaid over a minimum of 24 months. The tenant would still be required to pay \$3,000+GST to the landlord each month.

What if the Landlords and Tenants cannot reach agreement?

If the parties cannot reach agreement on leasing arrangements, the matter should be referred and subjected to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation.

Does the code apply to Residential tenancies?

No, it only applies to commercial tenancies.

How do Landlords verify the reduction in the tenant's trade?

Landlords and tenants are expected to act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this code.





Land Tax Waiver and Deferral

The National Cabinet has indicated that State and Territory Governments may provide land tax waivers and land tax deferrals on application by landlords. New South Wales and Victoria have announced deferral programs but to date Queensland have not. In any case, the benefits must be passed onto tenants by the landlords to ensure the benefit is being shared by both parties. State by State initiatives are detailed below.

Queensland

Queensland land tax relief is provided in the following forms:

- 25% rebate for eligible properties for the 2019/20 year
- A waiver of the 2% foreign surcharge for the 2019/20 year
- 3 month deferral of land tax liabilities for the 2020/21 year

Only the rebate is conditional, and will be available where all of the following apply –

- The ability of at least one tenant to pay rent is affected by the pandemic;
- Rent relief commensurate with the rebate amount is provided to the tenants;
- You will act in accordance with the Leasing Principals

Victoria

Landowners due to pay 2020 land tax that have at least one non-residential property and total taxable landholdings below \$1 million have the option of deferring their 2020 land tax payment until after 31 December 2020.

The State Revenue Office will contact all taxpayers who are eligible for this deferral.

South Australia

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.

Landowners will be sent their land tax notices of assessment as usual, with information provided on how the deferral will be administered.

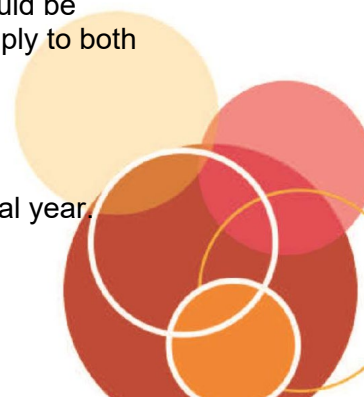
New South Wales

Landowners can go on an eight-month instalment plan to pay their land tax, without interest, starting in May, or they can defer paying for three months with a six-month instalment plan inclusive of interest.

On 13 April, the NSW Government announced a \$440 million rent relief program that would be delivered through land tax reduction of 25% for the rest of this year. The program will apply to both residential and commercial tenants – details to come.

Tasmania

Land tax will be waived for commercial property business owners for the 2020-21 financial year.





The business owner must be liable for the land tax and be able to demonstrate that their business operations have been affected by COVID-19.

Western Australia

Businesses impacted by COVID-19 can also apply for an interest-free payment arrangement and for late payment penalties to be waived for transfer duty, landholder duty or land tax. One-off \$2,500 credit available for Synergy and Horizon Power customers that consumed less than 50 megawatt hours (MWh) per annum would be available to those suffering economic hardship due to the coronavirus lockdown.

Northern Territory

Power and water bills will be reduced by 50% for business owners which have been affected by COVID-19.

Australian Capital Territory

All general rates notices will be delayed by four weeks. Homeowners with a household income of less than \$160,000 will also be able to defer their rates for 12 months, if they have suffered at least a 25 per cent drop in their income due to COVID-19. Residential landlords, whose tenants have been impacted, will be offered rebates if they agree to lower rents by at least 25 per cent. Households already receiving the Utilities Concession will receive an additional \$200 rebate through their electricity bill.

Small business owners with electricity usage below 100 megawatts per year will see rebates of \$750 automatically applied to their next electricity bill in around June or July 2020. Commercial rate payers will receive a credit of \$2,622 (equivalent to the annual fixed charge) to their 2019-20 general rates, in quarter four. This will be applied automatically.

How can we help?

We can provide support to commercial tenants by determining the reduction in trade and eligibility for the JobKeeper Programme so this information can be made available to landlords to obtain a rent waiver and deferral.

We can also provide support to landlords by verifying the accuracy of the information provided by tenants seeking a rent waiver and deferral.

Cordner Advisory will provide further updates regarding the property sector as the situation continues to evolve.

Next steps

Contact us on 5504 5700 or email info@cordner.com.au to discuss your circumstances and how we can assist you.

