

COVID-19 commercial lease summary – state comparison

9 July 2020

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Introduction

As part of its response to the COVID-19 pandemic, the Australian Government announced on 7 April 2020 the National Cabinet Mandatory Code of Conduct – SME Commercial Leasing Principles (**Code of Conduct**).

The function of the Code of Conduct is to provide a framework to guide landlords and tenants in working out arrangements under their leases during the COVID-19 pandemic. The Code of Conduct is premised on principles of good faith, working together, and proportionate loss sharing; recognising that landlords and tenants share a common interest in maintaining leasing arrangements during the COVID-19 pandemic and through to the recovery.

The Code of Conduct itself is not enforceable in the states and territories. Each state and territory have enacted legislation to adopt and implement wholly or in part or with modifications the Code of Conduct.

This analysis is intended to provide a general summary of the legislation in each state and territory as at 9 July 2020.

Dentons has a dedicated team of leasing and dispute specialists. Please refer to the contacts at the end of this document for the lawyers in your state.

Jurisdictional summary

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia	Tasmania
Applicable legislation								
Act	The COVID-19 Emergency Response Act 2020 (ACT Act)	COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW Act)	Tenancies Legislation Amendment Act 2020 (NT Act)	COVID-19 Emergency Response Act 2020 (Qld Act)	COVID-19 Emergency Response Act 2020 (SA Act)	COVID-19 Omnibus (Emergency Measures) Act 2020 (VIC Act)	Commercial Tenancies (COVID-19 Response) Act 2020 (WA Act)	COVID-19 Disease (Emergency Provisions) Act 2020 (TAS Act)
Regulations / Declarations / Notices	The Leases (Commercial and Retail) COVID-19 Emergency Response Commercial Leases Declaration 2020 (ACT Declaration)	Retail and Other Commercial Leases (COVID-19) Regulation 2020 (NSW Regulations)	Business Tenancies COVID-19 Modification Notice 2020 (NT Notice)	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (QLD Regulations)	COVID-19 Emergency Response (Commercial Leases No. 2) Regulations 2020 (SA Regulations)	The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (VIC Regulations)	Commercial Tenancies (COVID-19 Response) Act 2020 (WA Regulations)	Covid-19 Disease Emergency (Miscellaneous Provisions) Act 2020 Notice Under Section 22 (TAS Notice)
Ability to opt out	No mention in the ACT Act or ACT Declaration	The tenant can agree to the landlord taking any prescribed action (i.e. drawing on the tenant's security and/or terminating the lease)	No mention in the NT Act or NT Notice	Nothing in the QLD Regulations: <ul style="list-style-type: none"> Prevents a landlord and tenant from entering into an agreement that is inconsistent 	No mention in the SA Act or SA Regulations	No mention in the VIC Act or VIC Regulations	No ability to contract out	No mention in the TAS Act or TAS Regulations

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				with the QLD Regulations <ul style="list-style-type: none"> Affects the validity of an agreement that is inconsistent with the Qld Regulations, whether entered into before or after the QLD Regulations came into effect 				
COVID-19 leasing emergency period								
Start date	1 April 2020	24 April 2020	18 March 2020	29 March 2020	30 March 2020	29 March 2020	30 March 2020	1 April 2020
End date	The later of: <ul style="list-style-type: none"> The day that a COVID-19 emergency is no longer in place (being when a state of emergency declared under the Emergencies Act 2004 	24 October 2020	The day that a COVID-19 emergency declaration is no longer in place	30 September 2020	30 September 2020	29 September 2020	29 September 2020, or such other date that may be prescribed	12 months from the commencement date of the Act, or such other date that may be declared

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	<p>or an emergency is declared under the Health Act 1997)</p> <ul style="list-style-type: none"> The day notified by the Minister 							
Eligibility								
Eligible leases	<p>Applies to commercial and retail leases entered into before 7 April 2020 and the tenant:</p> <ul style="list-style-type: none"> Has turnover of up to AU\$50 million in the 2018/2019 financial year (assessed at the group level if the tenant is a corporation that a member of a corporate group and assessed at the premises level if the 	<p>Applies to commercial and retail leases where the tenant:</p> <ul style="list-style-type: none"> Is a SME with a turnover of up to AU\$50 million in the 2018/2019 financial year (assessed at the group level if the tenant is a corporation that a member of a corporate group and assessed at the premises level if the tenant is franchisee) 	<p>Applies to retail leases and any other agreement for business purposes</p>	<p>Applies to:</p> <ul style="list-style-type: none"> A retail shop lease under the Retail Shop Leases Act 1994 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) <p>where the tenant:</p> <ul style="list-style-type: none"> Is an SME entity, being 	<p>Applies to 'commercial leases' being:</p> <ul style="list-style-type: none"> A retail shop lease under the <i>Retail and Commercial Leases Act 1995</i> A lease under the <i>Landlord and Tenant Act 1936</i> Any other agreement under which a person, for value, grants another person a right to occupy premises for carrying on a 	<p>Applies to retail or non-retail commercial leases or commercial licences where the tenant:</p> <ul style="list-style-type: none"> Is a SME entity or not for profit entity with a turnover of up to AU\$50million Qualifies for the JobKeeper scheme and is a participant in the JobKeeper scheme 	<p>Applies to 'small commercial leases' being:</p> <ul style="list-style-type: none"> A retail shop lease under the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> A lease where the tenant owns or operates a small business which is wholly owned and operated by an individual 	<p>Leases to a tenant, wholly or predominantly for the carrying on of any business, trade or profession, whether or not by a person for profit, by a charitable organisation or by a body of persons that is not predominantly established for the purpose of profit and where:</p> <ul style="list-style-type: none"> The turnover, in a continuous one month period since 1 February 2020 has reduced by more than 30% in at least one continuous one

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<p>tenant is franchisee)</p> <ul style="list-style-type: none"> Has a reduction in turnover of at least 30% compared to the same period in 2019 <p>Excludes:</p> <ul style="list-style-type: none"> Leases entered into after 7 April 2020 Leases for retail or other premises located in the retail area of a shopping centre with a lettable area larger than 1000m² leased to a listed public company or a subsidiary of a listed public company Leases for less than six months, unless the lease is a 	<ul style="list-style-type: none"> Has a reduction in turnover of at least 30% compared to the same period in 2019 <p>Excludes:</p> <ul style="list-style-type: none"> Agricultural leases Residential leases Leases entered into after 24 April 2020 (except pursuant to an option to renew or other extension of lease on the same terms as existing) 		<p>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"> The entity has a likely annual turnover of less than AU\$50 million for the current financial year The entity or not-for-profit body had an annual turnover of less than AU\$50 million in the previous financial year) The tenant, or an entity that is connected with, or an affiliate of, the tenant responsible for, or involved in, 	<p>business (whether or not carried on with a view to profit) involving manufacture, sale or supply of goods or services.</p> <p>Excludes:</p> <ul style="list-style-type: none"> A lease under the <i>Pastoral Land Management and Conservation Act 1989</i> A lease under the <i>Crown Land Management Act 2009</i>. <p>In addition, the majority of the provisions in the SA Act only apply to an “affected lessee” being:</p> <ul style="list-style-type: none"> A lessee suffering financial hardship as a result of the 	<p>Excludes:</p> <ul style="list-style-type: none"> Leases where the tenant is a member of a prescribed group of entities and the aggregate turnover for the group is over a yet to be prescribed amount Leases where there is a relationship or connection between the tenant and another yet to be prescribed entity and the aggregate turnover of the tenant and the other entity exceeds the prescribed amount Leases wholly or predominantly for farming, grazing, agricultural, pastoral, 	<p>(alone or in partnership) or by a proprietary company and which has a relatively small share of the market in which it competes and is managed personally by the owner or owners or directors and is not a subsidiary of, or does not form part of, a larger business or enterprise</p> <ul style="list-style-type: none"> A lease to an incorporated association Any other lease of a class prescribed by the regulations 	<p>month period since 1 February 2020</p> <ul style="list-style-type: none"> The tenant's turnover for the period from 1 February 2019 to 31 January 2020 up to AU\$50million

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	<p>continuous occupation lease</p> <ul style="list-style-type: none"> Specific leases mentioned at Regulation 4(1) of the <i>Leases (Commercial and Retail) Regulation 2002</i> 			<p>employing staff for the business carried on from the premises, is eligible for the JobKeeper scheme</p> <p>Excludes:</p> <ul style="list-style-type: none"> Leases where the premises are used wholly or predominantly for a farming business under the <i>Farm Debt Mediation Act 2017</i> A lease, permit, licence or sublease under the Land Act 1994, unless it is a sublease of premises under a lease that has a rental category of 13 – 16 under that Act and the sub lessor under the 	<p>COVID-19 pandemic (a lessee eligible for, or receiving, JobKeeper payments is deemed to be suffering financial hardship)</p> <ul style="list-style-type: none"> The turnover of the lessee's business conducted from the premises for the relevant year is less than AU\$50 million 	<p>horticultural, apicultural and similar activities</p>	<p>Excludes:</p> <ul style="list-style-type: none"> A long stay agreement to which the <i>Residential Parks (Long-stay Tenants) Act 2006</i> A residential tenancy A pastoral lease A mining tenement Any other lease of a class yet to be prescribed by the WA Regulations <p>In addition, the majority of the provisions in the WA Regulations only apply to an eligible tenant.</p> <p>A tenant under a small commercial lease is eligible if the tenant:</p>	

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				<p>sublease is not a government leasing entity within the meaning of the <i>Land Regulation 2009</i>; and leases entered into after 29 March 2020 (except pursuant to an option to renew or other renewal or extension of lease on the same terms as existing)</p>			<ul style="list-style-type: none"> Has turnover of up to AU\$50 million in the 2018/2019 financial year (assessed at the group level if the tenant is a corporation that is a member of a corporate group and assessed at the premises level if the tenant is franchisee) Is eligible for the JobKeeper program or can prove a 30% reduction (15% for) in turnover due to the pandemic 	
Tenant must honour lease								
Does the tenant lose the	No mention in the ACT Act or	Yes, except for the following	No mention in the NT Act or NT	No mention in the Qld Act or	Yes, except for the following	No mention in the VIC Act or	No mention in the WA Act or	No mention in the TAS Act or TAS

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protection of the Legislation if the tenant breaches the lease?	ACT Declaration	breaches: <ul style="list-style-type: none"> • Failure to pay rent • Failure to pay outgoing • Failure to open for business during the hours required under the lease 	Notice	QLD Regulations	breaches by an affected lessee: <ul style="list-style-type: none"> • Failure to pay rent • Failure to pay outgoing • Failure to open for business during the hours specified in the lease 	VIC Regulations	WA Regulations	Regulations
Default and termination of lease								
Are any tenant defaults permitted? (i.e. not a breach of the lease)	No mention in the ACT Act or ACT Declaration	Any acts or omissions of the tenant required by law in response to the COVID-19 pandemic is not a breach of the lease, and not constitute grounds for termination or the taking of any prescribed action	No mention in the NT Act or NT Notice	Any act or omission of a tenant (under an affected lease or a small business lease) required under a COVID-19 response measure or law of the commonwealth or another state in response to the COVID-19 emergency will not be taken to amount to a breach of the lease and does not constitute	Any act or omission of a tenant required under the laws of the state in response to the COVID-19 pandemic will not be taken to amount as a breach, and not constitute grounds for termination or the taking of any prescribed action	No mention in the VIC Act or VIC Regulations	Any acts or omissions of the tenant required by law in response to the COVID-19 pandemic is not a breach of the lease, and does not constitute grounds for termination or the taking of any prescribed action	Any act or omissions of the tenant required under a COVID-19 response measure or law of the commonwealth or the state in response to the COVID-19 emergency will not be taken to amount to a breach and does not constitute grounds for termination or the taking of any prescribed action

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				grounds for termination or the taking of any prescribed action				
Defaults – landlord cannot terminate	For the period from 1 April 2020 and ending on the later of the day that a COVID-19 emergency is no longer in place and a day notified by the Minister, the landlord must not give a termination notice to an impacted tenant for unpaid rent, outgoings, other amounts due, or failing to operate the business on the premises during the hours required under the lease, unless the landlord has engaged in good faith negotiations with the tenant	For the period from 24 April 2020 and ending on 24 October 2020, the landlord must not terminate the lease or re-enter the premises if the tenant during the emergency period: <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the business during hours or times specified in the lease 	Whilst the COVID-19 public health emergency is declared or whilst there is a declaration of a state of emergency, the landlord must not give a tenant a notice to quit unless the landlord for a period of at least 30 business days, made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises	For the period from 29 March 2020 to 30 September 2020, the landlord under an affected lease must not (amongst other things) terminate the lease or re-enter the premises if the tenant: <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the business during hours or times specified in the lease Any prescribed action that a landlord has taken or commenced between 29 March 2020 and	For the period from 30 March 2020 and ending on 30 September 2020, the landlord must not terminate the lease or re-enter the premises if the tenant is an affected lessee and the tenant: <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the business during hours or times specified in the lease Any prescribed action that a landlord has taken or commenced between 30 March 2020 and	For the period from 29 March 2020 and ending on 30 September 2020, the landlord must not evict or otherwise attempt to recover possession of the premises if the tenant, having negotiated a rent reduction and complied with the VIC Act and VIC Regulations, fails to pay the original amount of rent	For the period from 30 March 2020 and ending on 29 September 2020 or such other date that may be prescribed, the landlord must not terminate the lease or re-enter the premises if the tenant: <ul style="list-style-type: none"> • Fails to pay rent or any other money under the small commercial lease • Fails to open the premises • Does any act or omission prescribed by the WA Regulations Any prescribed action (i.e. enforcement action including	For the period from 1 April 2020 to 12 months from the commencement date of the Act, or such other date that may be declared, the landlord must not terminate the lease or re-enter the premises except as permitted if the tenant: <ul style="list-style-type: none"> • Fails to pay rent or other money payable under the lease • Fails to meet criteria based on sales performance • Fails to open the business during hours or times specified in the lease • Breaches the lease in a manner that is yet to be

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				27 May 2020 but not yet completed or finalised against a tenant is taken to be suspended or stayed until the emergency period ends (30 September 2020)	9 April 2020, but not yet completed, against a tenant suffering financial hardship is taken to be suspended or stayed until the emergency period ends (30 September 2020)		right of re-entry, termination and calling on any security) that a landlord has taken or commenced between 30 March 2020 and 23 April 2020 but not yet completed against a tenant is taken to be suspended or stayed until the emergency period ends (29 September 2020)	prescribed by the regulations Any prescribed action that a landlord has taken or commenced between 1 April and 2020 prior to the commencement date of the Act, but not yet completed, against a tenant is taken to be suspended or stayed until the emergency period ends (12 months from the commencement date of the Act, or such other date that may be declared)
Defaults – landlord can terminate	Landlords can terminate leases unless the moratorium against termination set in the section 'Defaults – landlord cannot terminate' applies. Leases can be terminated by agreement	Landlords can terminate leases unless the moratorium against termination set in the section 'Defaults – landlord cannot terminate' applies. Leases can be terminated by agreement	Landlords can terminate if the landlord has a reasonable belief the tenant will engage in illegal conduct on the premises or conduct that caused or will cause substantial damage to the premises	A landlord may take any prescribed action, including termination, against a tenant: <ul style="list-style-type: none"> On the grounds of a breach of the lease, if the tenant is not considered 	A landlord may take any prescribed action, including termination, against a tenant, on the grounds of a breach of the lease, if the tenant is not considered an affected lessee. A landlord may also take any	Landlords can terminate leases unless the moratorium against termination set in the section 'Defaults – landlord cannot terminate' applies.	Landlords can terminate leases unless the moratorium against termination set in the section 'Defaults – landlord cannot terminate' applies. Additionally landlords may make a request	Landlords can terminate leases unless the moratorium against termination set in the section 'Defaults – landlord cannot terminate' applies.

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	between the landlord and tenant.	between the landlord and tenant.	contrary to the business lease.	<p>an affected lessee;</p> <ul style="list-style-type: none"> On a ground that is not related to the effects of the COVID-19 emergency If despite a genuine attempt by the landlord to negotiate a rent payable and other conditions of the lease, the tenant has substantially failed to comply with the tenant's obligations under Division 3 in relation to the negotiations For any other breach other than a failure to pay rent or outgoings or 	<p>prescribed action, including termination, against an affected lessee:</p> <ul style="list-style-type: none"> For failure to pay rent, if the amount of rent payable under the lease is agreed by the parties under mediation, or determined by the court For any other breach other than a failure to pay rent or outgoings or failing to open for business during the hours required by the lease 		to the state Administrative Tribunal to terminate leases or for resolution of disputes where the tenant is not experiencing financial hardship and fails to pay rent or other money and does not have a rent deferral or rent waiver in place.	

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				<p>failing to open for business during the hours required by the lease</p> <ul style="list-style-type: none"> It is in accordance with an order of a court or tribunal, a settlement agreement or other agreement entered into between the landlord and tenant in relation to the tenant's failure to pay rent, outgoings or trade from the premises or any variation of the lease made under Division 3 				

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Rent increases, reductions, deferrals and waivers								
Rent increases	No mention in the ACT Act or ACT Declaration	Rent (except turnover rent) cannot be increased during the emergency period or retrospectively for that period	No mention in the NT Act or NT Notice	Rent (other than turnover rent) cannot be increased during the period 29 March 2020 to 30 September 2020. The landlord may only give effect to an increase in rent after the response period ends (i.e. after 30 September 2020)	Unless otherwise agreed, rent (other than turnover rent) cannot be increased during the period from 30 March 2020 and ending on 30 September 2020 if the tenant is an affected lessee	Unless otherwise agreed, rent (other than turnover rent) cannot be increased during the period from 29 March 2020 to 29 September 2020 (at this stage)	Rent (other than turnover rent) cannot be increased during the emergency period. Rent reviews undertaken between 30 March 2020 and 23 April 2020 that increased rent is valid but the increase is stayed until the end of the emergency period.	Rent (other than turnover rent) cannot be increased during the emergency period. The parties can agree to a rental increase.
Requesting rent relief and information to be provided	Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct	Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct	No mention in the NT Act or NT Notice	Upon receipt of a request, the parties must give each other information relating to the request that is true, accurate, correct and not misleading, and sufficient to enable the parties to negotiate in a fair and	The parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under a lease having regard to the economic impacts of COVID-19 pandemic on the parties to the	The tenant's request for rent relief must be in writing and be accompanied by a statement by the tenant that both: <ul style="list-style-type: none"> • Attests to the lease's eligibility • Includes evidence 	The tenant's request for rent relief must be in writing and be accompanied by a statement by the tenant that both: <ul style="list-style-type: none"> • Attests to the lease's eligibility as a small commercial lease 	Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct

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			<p>transparent way. For example, a statement by the tenant that demonstrates why the lease is an affected lease, accompanied by information and evidence, including: financial information and statements about turnover, information demonstrating the tenant is an SME entity, evidence of the tenant's eligibility for the JobKeeper scheme, details of any steps taken by a tenant to mitigate the effects of the COVID-19 emergency etc.</p> <p>A party may ask another party to the lease to negotiate a further reduction</p>	<p>lease and the provisions of the Code of Conduct. If the tenant is an affected lessee, then the tenant may apply to the commissioner for mediation and if the dispute is not resolved an affected lessee may apply to court for the resolution of a dispute.</p>	<p>that the tenant is a SME entity and qualifies for, and is a participant in, the federal government's JobKeeper scheme</p> <p>The landlord must offer rent relief to the tenant within 14 days of receipt of the tenant's request which conforms with the requirements or such later date as agreed between the parties in writing.</p>	<ul style="list-style-type: none"> Includes evidence that the tenant is eligible <p>The landlord cannot make onerous requests for information.</p> <p>The landlord must offer rent relief to the tenant within 14 days of receipt of the tenant's request which conforms with the requirements.</p> <p>If the tenant's financial circumstances change or the tenants views it would receive more favourable rent relief than that agreed prior to the adoption of the WA Regulations, then the tenant can make a request or further requests for rent relief.</p>	

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				<p>in rent during the response period, 29 March 2020 to 30 September 2020, if after a reduction of rent is agreed (whether that agreement is entered into before or after 28 May 2020), a ground on which that agreement is based changes in a material way. For example, the tenant's turnover has not increased as significantly as anticipated, the tenant's income decreases substantially etc.</p> <p>In these instances, the landlord is not required to provide at least 50% of the offered relief in the form of a waiver of rent.</p>				
Rent relief	Rent relief	Rent relief	No mention in	There is no	There is no	Although there is	The rent relief	No mention.

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calculation	granted must be proportionate based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period	granted must be proportionate based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period	the NT Act or NT Notice	specific formula for the amount of rent relief to be provided by the landlord, however, the QLD Regulations provide for the parties to cooperate and act reasonably and in good faith in negotiating a reduction in the amount of rent payable under a lease for the period 29 March 2020 to 30 September 2020	specific formula for the amount of rent relief provided in the SA Act or SA Regulations. However, the SA Regulations provide for the parties to make a genuine attempt to negotiate in good faith the rent payable under the lease having regard to the provisions of the Code of Conduct	no specific formula for rent relief specified in the Regulations, the Regulations state that a tenant may request rent relief from a landlord	must be at least proportionate to the reduction in the tenant's turnover during the emergency period	Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct
Waivers	<p>At least 50% of the offered relief is to be in the form of a waiver of rent.</p> <p>More than 50% may be required to be waived on a case by case basis but having regard to the landlord's capacity.</p>	<p>At least 50% of the offered relief is to be in the form of a waiver of rent.</p> <p>More than 50% may be required to be waived on a case by case basis but having regard to the landlord's capacity.</p>	No mention in the NT Act or NT Notice	At least 50% of the offered relief must be in the form of a waiver of rent	<p>Should the court make an order to grant rent relief to an affected lessee, then at least 50% of the rent relief must be in the form of a waiver of rent.</p> <p>Also, if a landlord receives a waiver of land tax or a relief payment under a scheme</p>	At least 50% of the offered relief must be in the form of a waiver of rent	<p>At least 50% of the offered relief is to be in the form of a waiver of rent unless otherwise agreed.</p> <p>More than 50% may be required to be waived on a case by case basis but having regard to the landlord's</p>	No mention Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct

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					administered by the Treasurer due to the COVID-19 pandemic, the landlord must pass on the benefit of the waiver or relief payment in the form of a waiver of rent		capacity	
Deferrals	<p>The balance of the rent relief amount that is not waived must be provided as a deferral, amortised over the greater of:</p> <ul style="list-style-type: none"> The balance of the term of the lease 24 months <p>Repayments not to commence until after the COVID-19 pandemic is over, unless the lease expires earlier in which case the repayments can commence upon</p>	<p>The balance of the rent relief amount that is not waived must be provided as a deferral, amortised over the greater of:</p> <ul style="list-style-type: none"> The balance of the term of the lease 24 months <p>Repayments not to commence until after the COVID-19 pandemic is over, unless the lease expires earlier in which case the repayments can commence</p>	No mention in the NT Act or NT Notice	<p>The balance of the rent relief amount that is not waived must be provided as a deferral, amortised using a method agreed by the parties over a period of two years but no more than three years.</p> <p>Repayments of the deferred rent must not commence until the day after the end of the response period (which at this stage is 1 October 2020).</p>	Should the court make an order to defer the payment of the rent, the specified period cannot exceed 24 months	<p>A landlord cannot request payment of any deferred rent until the earlier of:</p> <ul style="list-style-type: none"> The expiry of the lease term (included any extension granted under the Regulations The expiry of the period to which the Regulations apply (which at this stage is 29 September 	<p>The balance of the rent relief that is not waived must be provided as a deferral, amortised over the greater of:</p> <ul style="list-style-type: none"> The balance of the term of the lease 24 months <p>Repayments must not commence until after the expiry of the emergency period, unless the small commercial lease expires earlier in which</p>	<p>No mention</p> <p>Tenants may request the rent be renegotiated having regard to the leasing principles in the Code of Conduct</p>

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	expiry.	upon expiry.				2020)	case the repayments can commence upon expiry of the small commercial lease.	
Outgoings and statutory charges								
Outgoings relief	Landlords where appropriate should look to waive recovery of non-statutory outgoings from tenants who are unable to trade. Landlords may reduce services as required in these circumstances.	Landlords where appropriate should look to waive recovery of non-statutory outgoings from tenants who are unable to trade. Landlords may reduce services as required in these circumstances.	No mention in the NT Act or NT Notice	Landlord may cease or reduce any service at premises to the extent that it is reasonable in the circumstances (i.e. having regard to the COVID-19 emergency) and subject to any reasonable request by a tenant.	No mention in SA Act or SA Regulations	A landlord under an eligible lease must consider waiving recovery of any outgoing or other expense payable by a tenant under the eligible lease for any part of the relevant period that the tenant is not able to operate their business from the premises.	Landlords where appropriate should look to waive recovery of outgoings from tenants who are unable to trade.	No mention
Statutory outgoing relief	Any reduction in statutory outgoings (e.g. land tax and council rates) should be passed on to tenants in the proportion applicable under	For tenants who pay statutory outgoings (such as land tax and council rates), the amount payable is reduced to the extent of any reduction	No mention in the NT Act or NT Notice	If a portion or rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges,	For the period from 30 March 2020 and ending on 30 September 2020, for tenants who pay land tax, a landlord must not require an affected	For tenants that pay statutory outgoings (such as land tax and council rates), the amount payable is reduced to the extent of any reduction	Any reduction in statutory outgoings (e.g. land tax and council rates) should be passed on to tenants in the proportion applicable under	No mention

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	the lease.	received by the landlord.		insurance premiums or other outgoings, an offer of rent relief must have regard to any reduction in, or waiver of, the amount payable.	lessee, to pay land tax or reimburse the landlord for the payment of land tax. Also, if a landlord receives a waiver of land tax or a relief payment under a scheme administered by the Treasurer due to the COVID-19 pandemic, the landlord must pass on the benefit of the waiver or relief payment in the form of a waiver of rent to the tenant.	received by the landlord.	the small commercial lease.	

Trading hours

Trading hours	During the emergency period, the landlord must not give a termination notice to an impacted tenant	Any acts or omissions of the tenant required by law in response to the COVID-19 pandemic is not a breach of the	No mention in the NT Act or NT Notice	A landlord cannot take any prescribed action (i.e. eviction, re-entry, drawing on the tenant's security, or termination) for a	A landlord cannot take any prescribed action (i.e. eviction, re-entry, drawing on the tenant's security, or termination) for a	Landlord cannot terminate the lease, seek damages, and enforce security if the tenant does not open for business	Failure to open the premises for business during the hours required under the small commercial lease is not a	Landlord cannot terminate the lease, seek damages, and enforce security if the tenant does not open for business during the hours required under the
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	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia	Tasmania
	for failing to operate the business on the premises during the hours required under the lease unless the landlord has engaged in good faith negotiations with the tenant having regard to the leasing principles in the Code of Conduct.	lease (e.g. closure of premises by government order). For the emergency period, the landlord must not take any prescribed action (i.e. drawing on the tenant's security and/or terminating the lease) for the tenant not being open for business during the hours required under the lease.		tenant not being open for business during the hours required under the lease.	tenant not being open for business during the hours required under the lease.	during the hours required under the lease.	breach under the small commercial lease.	lease.

Security

Ability to call on bank guarantees / security deposits during COVID-19 period for defaults	During the period from 1 April 2020 and ending on the later of the day that a COVID-19 emergency is no longer in place and a day notified by the Minister a	The landlord must not draw on the whole or part of a security bond (which includes bank guarantees) if the tenant during the period from 24 April 2020 and ending on	No mention in the NT Act or NT Notice	For the period from 29 March 2020 to 30 September 2020, the landlord must not make a claim on a bank guarantee, indemnity or security deposit	There is no specific mention of bank guarantees in the SA Act or SA Regulations. For the period from 30 March 2020 to 30 September 2020, the	A landlord cannot draw on a bank guarantee during the period from 29 March 2020 to 29 September 2020 (at this stage) if the tenant, having negotiated a rent	A landlord's ability to call on bank guarantees or security deposits will depend on the nature of the tenant's breach. Landlords cannot call on bank guarantees	A landlord cannot draw on a bank guarantee during the period from 1 April 2020 to 12 months from the commencement date of the Act, or such other date that may be declared.
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	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia	Tasmania
	<p>Landlord must not recover whole or part of the security bond (which includes bank guarantees) under the lease if the tenant:</p> <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings or other money under the lease • Fails to open the premises <p>unless the landlord has engaged in good faith negotiations with the tenant having regard to the leasing principles in the Code of Conduct.</p>	<p>24 October 2020:</p> <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the premises during the hours required under the lease 		<p>for unpaid rent or outgoings if the tenant during that period:</p> <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the premises during the hours required under the lease 	<p>landlord must not draw on the whole or part of a security bond if a tenant is an affected lessee and:</p> <ul style="list-style-type: none"> • Fails to pay rent • Fails to pay outgoings • Fails to open the premises during the hours required under the lease 	<p>reduction and complied with the VIC Act and VIC Regulations, fails to pay the original amount of rent.</p>	<p>or security deposits during the period from 30 March 2020 and ending on 29 September 2020 or such other date that may be prescribed in relation to the following breaches:</p> <ul style="list-style-type: none"> • Failure to pay rent or any other money under the small commercial lease • Failure to open the premises • Any act or omission prescribed by the WA Regulations 	
Personal guarantees	<p>During the period from 1 April 2020 and ending on the later of the day that a COVID-19</p>	<p>For the period from 24 April 2020 to 24 October 2020, the landlord must not enforce</p>	<p>No mention in the NT Act or NT Notice</p>	<p>No specific mention in the QLD Regulations, although refer to our comments in</p>	<p>For the period from 30 March 2020 to 30 September 2020, the landlord must</p>	<p>A landlord cannot enforce performance by the guarantors under a guarantee during</p>	<p>Landlords cannot enforce performance by the guarantors under a guarantee during</p>	<p>A landlord cannot enforce performance by the guarantors under a guarantee during the period from 1 April 2020 to</p>

	Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia	Tasmania
	<p>emergency is no longer in place and a day notified by the Minister, a landlord must not enforce the performance of the obligations by any person guaranteeing the tenant's obligations under the lease on grounds of the following breaches:</p> <ul style="list-style-type: none"> • Payment of rent • Payment of outgoing • Opening the premises during the hours required under the lease <p>unless the landlord has negotiated with the tenant in good faith having regard to the leasing principles on the</p>	<p>the performance by a guarantor of the following obligations under the lease arising during the period from 24 April 2020 to 24 October 2020:</p> <ul style="list-style-type: none"> • Payment of rent • Payment of outgoing • Opening the premises during the hours required under the lease 		<p>relation to bank guarantees and the reference to indemnities.</p>	<p>not seek performance of any obligations of an affected lessee, pursuant to a guarantee arising from an affected lessee's:</p> <ul style="list-style-type: none"> • Failure to pay rent • Failure to pay outgoing • Failure to open the premises during the hours required under the lease 	<p>the period from 29 March 2020 to 29 September 2020 (at this stage) if the tenant, having negotiated a rent reduction and complied with the VIC Act and VIC Regulations, fails to pay the original amount of rent.</p>	<p>the period from 30 March 2020 and ending on 29 September 2020 or such other date that may be prescribed in relation to the following breaches:</p> <ul style="list-style-type: none"> • Failure to pay rent or any other money under the small commercial lease • Failure to open the premises • Any act or omission prescribed by the WA Regulations 	<p>12 months from the commencement date of the Act, or such other date that may be declared.</p>

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	Code of Conduct.							
Extension of lease								
Extension of lease	Tenants should be provided with the opportunity to extend the lease for an equivalent period of the rent waiver/rent deferral period.	Tenants should be provided with the opportunity to extend the lease for an equivalent period of the rent waiver/rent deferral period.	No mention in the NT Act or NT Notice	The landlord must offer the tenant an opportunity to extend the lease for an equivalent period of the rent waiver/rent deferral period. This obligation: <ul style="list-style-type: none"> Applies only to the extent that the landlord is not subject to an existing legal obligation that is inconsistent with the obligation to extend the lease under s18 of the Qld Regulations 	No mention in SA Act or SA Regulations	Tenants should be provided with the opportunity to extend the lease for an equivalent period of the rent waiver/rent deferral period.	The landlord must offer the tenant to extend the term of the small commercial lease for a period equivalent to the period which the rent is deferred unless an extension is inconsistent with the term of the head lease (if applicable) or inconsistent with another contract or agreement the landlord has with a third party.	Tenants should be provided with the opportunity to extend the lease until the end of the emergency period or longer period.

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				<ul style="list-style-type: none"> Does not apply if the landlord demonstrates that the lease cannot be extended because the lessor intends to use the premises for a commercial purpose of the landlord 				
Disputes								
Tribunal or court	<p>There is no requirement for mediation under the ACT Declaration.</p> <p>Landlords and Tenants are supported by the local business commissioner, acting as a commercial tenancy mediator to assist the parties</p>	<p>Retail leases</p> <p>Part 8 (Dispute Resolution) of the Retail Leases Act applies to disputes relating to circumstances arising during the emergency period.</p> <p>Other commercial leases</p>	<p>Before an application for a warrant of possession can be determined, the matter must be referred to the NTCAT for alternative dispute resolution unless the local court is satisfied that the parties prefer to arrange their own mediation or</p>	<p>Before starting mediation under the QLD Regulations, for an eligible lease dispute (i.e. an affected lease dispute or small business tenancy dispute), the parties to the lease must attempt to resolve the dispute.</p>	<p>Mediation</p> <p>A party to a lease may apply to the Commissioner for mediation of a relevant dispute in relation to a lease, however a tenant may only apply for mediation if they are or are claiming to be an</p>	<p>Either the landlord or tenant may seek mediation of the dispute through the Small Business Commissioner.</p> <p>If mediation is unsuccessful or in other limited circumstances, either party may apply to the VCAT to resolve</p>	<p>Either the landlord or tenant may seek mediation of the dispute through the Small Business Commissioner.</p> <p>If mediation is unsuccessful or if the parties agree not to refer the matter to the Small Business</p>	<p>Parties must attempt to resolve any disputes directly between themselves.</p> <p>Parties may apply to a mediation provider for mediation or alternatively seek to have the dispute arbitrated.</p>

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	<p>to engage in good faith negotiations and reach an outcome that has regard to the leasing principles of the Code of Conduct.</p> <p>The Magistrates Court must not confirm termination of a lease where a termination notice was issued in the pre-commencement period (1 April 2020 to 11 May 2020) unless the court is satisfied that the landlord has negotiated with the tenant in good faith having regard to the leasing principles in the Code of Conduct.</p>	<p>A landlord must not take any prescribed action (i.e. drawing on the tenant's security and/or terminating the lease) unless and until the landlord has obtained from the Small Business Commissioner a certificate that mediation has failed to resolve the dispute and stating the reasons why.</p> <p>Courts and tribunals</p> <p>A tribunal or court (as applicable) is to have regard to the leasing principles of the Code of Conduct when making an order regarding a prescribed action (i.e. drawing on the tenant's security and/or terminating the</p>	<p>cancellation.</p>	<p>Under the QLD Regulations, a party to an eligible lease dispute may give notice of the dispute to the small business commissioner (SBC). The dispute notice must be in the form approved by the SBC. As soon as practicable after receiving a dispute notice, the SBC must either accept or dismiss the dispute notice. It may only dismiss the notice if it considers the dispute notice does not relate to an eligible lease, is frivolous or vexatious, or has not been given in good faith.</p> <p>The QLD Regulations sets out its requirements of</p>	<p>affected lessee. At the conclusion of the mediation, the Commissioner will issue the parties to the mediation with a certificate stating if the mediation has failed, or if a party has refused to participate, or if mediation would not be reasonable in the circumstances.</p> <p>Court resolution</p> <p>A party to a lease may apply to the court for a resolution of a relevant dispute only if the Commissioner has issued a certificate.</p> <p>The court may make a determination as to whether or not a tenant is considered an</p>	<p>a dispute.</p>	<p>Commissioner then either party may apply to the State Administrative Tribunal to resolve the dispute under a small commercial lease.</p> <p>The State Administrative Tribunal can make orders:</p> <ul style="list-style-type: none"> • A party pay the other • Granting rent waivers or deferrals • If the proceedings relate to a financial hardship dispute, terminating the small commercial lease 	

Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Victoria	Western Australia	Tasmania
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lease).

the SBC and the mediation process.

Parties have a right to apply to QCAT if they meet certain criteria, including where the eligible ease dispute is within QCAT's jurisdiction, the lease has not ended and the parties cannot reach a settlement agreement at the mediation.

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 dispute. However, this does not prevent

affected lessee (see above for meaning of affected lessee).

The court may:

- Make an order granting rent relief to an affected lessee in relation to the payment of rent (with at least 50% of the rent relief to be in the form of a waiver)
- Make an order requiring the payment of some or all of the rent
- Make an order requiring the rent to be paid into the court to be applied as directed by the court
- Make an order to

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				<p>a party from starting mediation under part 3 of the QLD Regulations.</p>	<p>modify the terms of the lease</p> <ul style="list-style-type: none"> • Make an order to defer payment of rent for a specified time period not exceeding 24 months 			

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