



K&L GATES

# COVID-19 – Retail and Commercial Leasing Matrix

Accurate at 22 June 2020

## COVID-19 Retail and Commercial Leasing Matrix

### Introduction

The COVID-19 Retail and Commercial Leasing Matrix (**Matrix**) provides landlords and tenants with an overview of the COVID-19 response measures which have been enacted in each Australian State and Territory following the release of the National Cabinet's *Mandatory Code of Conduct: SME Commercial Leasing Principles During COVID-19* (**Code**) on 7 April 2020.

The Code embodied a set of good faith leasing principles to apply to certain commercial tenancies experiencing financial stress or hardship because of the COVID-19 pandemic. You can read more about the Code [here](#).

The Matrix is current as at 22 June 2020. We will continue to update this document if regulations change. You can read detailed summaries of regulations passed in various jurisdictions [here](#).

## Enabling Legislation (Acts) and Statutory Regulations (Regulations)

**WA:**  
*Commercial Tenancies (COVID-19 Response) Act 2020*  
*Commercial Tenancies (COVID-19 Response) Regulations 2020*

**SA:**  
*COVID-19 Emergency Response Act 2020*  
*COVID-19 Emergency Response (Further Measures) Amendment Act 2020*  
*COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*

**VIC:**  
*COVID-19 Omnibus (Emergency Measures) Act 2020*  
*COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020*

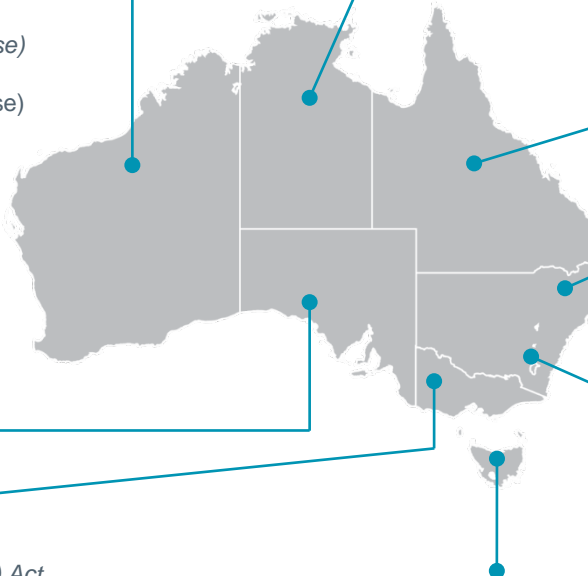
**TAS:**  
*COVID-19 Disease Emergency (Commercial Leases) Act 2020*  
Regulations are yet to be released

**NT:**  
*Tenancies Legislation Amendment Act 2020*  
*Business Tenancies COVID-19 Modification Notice 2020 gazetted by the Minister*  
No regulations

**QLD:**  
*COVID-19 Emergency Response Act 2020*  
*Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*

**NSW:**  
*COVID-19 Legislation Amendment (Emergency Measures) Act 2020*  
*Retail and Other Commercial Leases (COVID-19) Regulation 2020*

**ACT:**  
*COVID-19 Emergency Response Act 2020*  
*Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020*  
ACT Government Response on Commercial Tenancies Guidance Notes May 2020



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An overview of the COVID-19 response measures which have been enacted in each Australian State and Territory is set out below. The Matrix is intended to provide a summary only and does not replace a full review of the measures as and when required.

The terms "Act" and "Regulations" are references to the enabling legislation and regulations in each jurisdiction. References to "section" and "regulations" are references to sections of the relevant Act and regulations in the relevant Regulation respectively.

**When do the measures apply?**

**WA:**  
30 March 2020 to the end of the "emergency period", currently ending on 29 September 2020 (**emergency period**)

**SA:**  
30 March 2020 to 30 September 2020 (**Prescribed Period**)

**VIC:**  
29 March 2020 to 29 September 2020 (inclusive) (**Prescribed Period**)

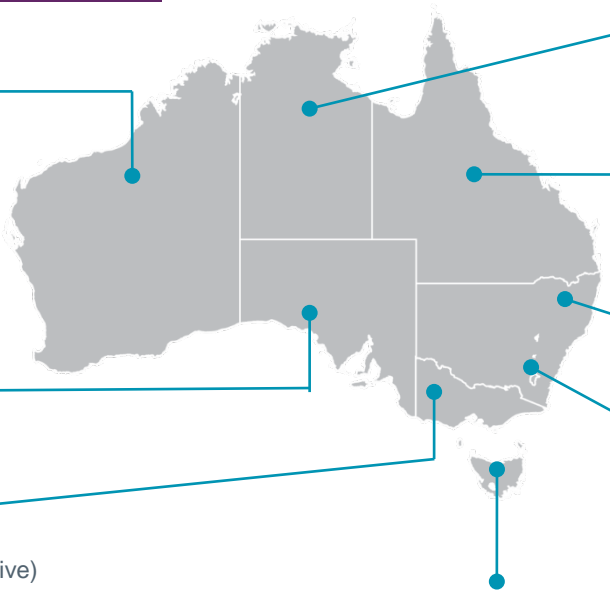
**TAS:**  
*Regulations are yet to be released. For the purposes of this Matrix, all references to Tasmanian measures are references to the measures set out in the Act.*  
The Act defines the period of coverage as 1 April 2020 until the financial hardship cessation day, which is currently 30 September 2020. (**Financial Hardship Period**)

**NT:**  
Business Tenancies COVID-19 Modification Notice 2020 applies from 18 March 2020 to 25 June 2020, subject to possible further extensions (**emergency period**)

**QLD:**  
29 March 2020 to 30 September 2020 (**Response Period**)

**NSW:**  
24 April 2020 to 23 October 2020 (inclusive) (**Prescribed Period**)

**ACT:**  
1 April to the date on which the COVID-19 emergency in the ACT is no longer in force, or such later day as notified by the Minister (**Prescribed Period**)



What leasing arrangements are caught?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>The Act and Regulations apply to an "Eligible Lease" that meets the following criteria:</p> <ul style="list-style-type: none"> <li>a) the Eligible Lease is in effect on 29 March 2020;</li> <li>b) the Eligible Lease must be either:                             <ul style="list-style-type: none"> <li>• a retail lease under the <i>Retail Leases Act 2003</i> (Vic);</li> <li>• a commercial lease or licence under which the premises are occupied for the sole or predominant purpose of carrying on a business; and</li> </ul> </li> </ul>	<p>The Declaration applies to "Impacted Tenants" of leases to which <i>the Leases (Commercial and Retail) 2001</i> (ACT) (Act) applies that were entered into prior to 7 April 2020.</p> <p>An Impacted Tenant is one who:</p> <ul style="list-style-type: none"> <li>a) at any time during the Prescribed Period qualifies for payments under the JobKeeper Scheme;</li> <li>b) has a turnover during the 2018-2019 financial year of less than \$50 million for:</li> </ul>	<p>The Regulations apply to "Commercial Leases", being leases that were entered into before 24 April 2019 and are:</p> <ul style="list-style-type: none"> <li>a) a retail shop lease within the meaning of the <i>Retail Leases Act 1994</i> (NSW); or</li> <li>b) other leases of land or premises for commercial purposes to which the <i>Conveyancing Act 1919</i> (NSW) applies.</li> </ul>	<p>The Regulations apply to <b>Affected Leases</b>, being leases which meet the following criteria:</p> <ul style="list-style-type: none"> <li>a) a retail shop lease under the <i>Retail Shop Leases Act 1994</i> or a lease under which the leased premises are to be wholly or predominantly used for carrying on a business;</li> <li>b) on 28 May 2020 the lease, or an agreement to enter into the lease, is binding on the lessee, whether or not the lease has commenced;</li> </ul>	<p>Subject to the Regulations (which are yet to be released), the Act applies to a "Protected Lease", which is a lease:</p> <ul style="list-style-type: none"> <li>a) that is a commercial lease to which Schedule 1 of the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 applies and the leased premises are occupied, or to be occupied, wholly or predominantly for business purposes, (excluding any prescribed leases under any Regulations);</li> </ul>	<p>The Regulations apply to "Commercial Leases" that are entered into before 30 March 2020, being:</p> <ul style="list-style-type: none"> <li>a) retail shop leases within the meaning of the <i>Retail and Commercial Leases Act 1995</i>;</li> <li>b) leases under the <i>Landlord and Tenant Act 1936</i>, including a retail shop lease to which Part 4 of that Act applies; or</li> </ul>	<p>The Act applies to 'small commercial leases', being any:</p> <ul style="list-style-type: none"> <li>a) retail shop lease as defined in the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> section 3(1); or</li> <li>b) small business lease, where the tenant owns or operates a small business and uses the land or leased premises for carrying on that business - where "small business" is defined in the <i>Small Business Development Corporations Act 1983</i> (WA) to mean a business undertaking which:</li> </ul>	<p>The Act applies to 'eligible leases', being:</p> <ul style="list-style-type: none"> <li>a) A retail shop lease or any other agreement or contract (including sublease) under which business premises are let or hired to a person (whether or not for exclusive possession or in writing or express or implied); and</li> <li>b) business leases that do not fall within the Business Tenancies (Fair Dealings) Act, for example a retail shop that has a lettable area of 1,000 m<sup>2</sup> or more, or a retail shop that is leased to a listed corporation).</li> </ul>

What leasing arrangements are caught?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>c) the tenant is an SME entity:</p> <ul style="list-style-type: none"> <li>• who is an employer who qualifies for and is a participant in the JobKeeper scheme;</li> <li>• who carries on a business (or is a non-profit body) during the current financial year; and</li> <li>• for which one or both of the following applies:                             <ul style="list-style-type: none"> <li>o the entity's annual turnover for the current financial year is likely to be less than AUD50 million; or</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• if the tenant is a franchisee, the business conducted at the premises or land under the lease;</li> <li>• if the tenant is member of a corporate group (ie a corporation and all its related bodies) - the group; and                             <ul style="list-style-type: none"> <li>o in any other case, the business conducted by the tenant.</li> </ul> </li> </ul> <p><i>(Regulation 3(1))</i></p>	<p>The Regulation also applies to Commercial Leases entered into after 24 April 2020 by means of an option to extend or renew an existing lease, on the same terms.</p> <p>The majority of the provisions of the Regulation apply to Commercial Leases where the tenant is an "Impacted Lessee", being a tenant who:</p> <ul style="list-style-type: none"> <li>a) qualifies for the JobKeeper scheme; and</li> <li>b) has a turnover in the 2018-2019 financial year which is less than AUD50 million.</li> </ul> <p><i>(Regulations 3 and 4 and Regulations 1 and 2 of Schedule 1)</i></p>	<p>c) the lessee is an SME entity, being an entity:</p> <ul style="list-style-type: none"> <li>• which carries on a business (or is a non-profit body) during the current financial year; and</li> <li>• for which one or both of the following applies:                             <ul style="list-style-type: none"> <li>i. the entity's annual turnover for the current financial year is likely to be less than AUD50 million; or</li> <li>ii. the entity's annual turnover for the previous financial year was less than AUD50 million; and</li> </ul> </li> </ul>	<p>b) under which, at any point in time during the Financial Hardship Period, the tenant:</p> <ul style="list-style-type: none"> <li>• is an eligible person:                             <ul style="list-style-type: none"> <li>o entitled to payment under the JobKeeper scheme or qualified for the JobKeeper scheme; and</li> <li>o becomes an SME entity whose annual turnover for the current financial year is likely to be less than AUD50 million; or</li> <li>o satisfies other criteria prescribed under any Regulations; or</li> </ul> </li> </ul>	<p>c) any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business (whether or not the right is of exclusive occupation and whether or not the agreement is expressed or implied, oral or in writing).</p> <p>The Regulations will also apply to Commercial Leases entered into after 30 March 2020 by means of an option to extend or renew or any other extension or renewal on the same or substantially similar terms as the existing lease.</p>	<p>i. is wholly owned and operated by an individual person or by individual persons in partnership or by a proprietary company within the meaning of the Corporations Act 2001 of the Commonwealth and which:</p> <ul style="list-style-type: none"> <li>A. has a relatively small share of the market in which it competes; and</li> <li>B. is managed personally by the owner or owners or directors, as the case requires; and</li> <li>C. is not a subsidiary of, or does not form part of, a larger business or enterprise; or</li> </ul>	

What leasing arrangements are caught?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<ul style="list-style-type: none"> <li>o the entity's annual turnover for the previous financial year was less than AUD50 million.</li> </ul> <p>(Sections 12 and 13)</p>			<ul style="list-style-type: none"> <li>d) the lessee is eligible for the JobKeeper scheme.</li> </ul> <p>(Regulation 5)</p>	<ul style="list-style-type: none"> <li>• a member of a class of persons that is prescribed under any Regulations; and</li> <li>a) entered into before or during the Financial Hardship Period (whether or not the lease is entered into pursuant to an option or a renewal of lease).</li> </ul> <p>(Section 4, 5(1) and 6 and 9)</p> <p>Note that an act or omission of a tenant or landlord to a commercial lease (whether or not it is a Protected Lease), that is an act, or omission, that, during or before the Financial Hardship Period, is:</p> <ul style="list-style-type: none"> <li>a) required, in response to COVID-19 or COVID-19</li> </ul>	<p>The majority of the provisions of the Regulations apply to Commercial Leases where the tenant is an "Affected Lessee", being a tenant who:</p> <ul style="list-style-type: none"> <li>a) is suffering financial hardship as a result of the COVID-19 pandemic (as identified below); and</li> <li>b) has a turnover in the 2018-2019 financial year (or a 12 month period or such lesser period determined by the Court or the Minister) which is less than AUD50 million.</li> </ul>	<ul style="list-style-type: none"> <li>ii. is declared by the Governor (none are currently declared); or</li> <li>c) lease by an incorporated association; or</li> <li>d) other prescribed lease (although none prescribed currently).</li> </ul> <p>For the Regulations and Code to also apply to 'small commercial leases', this additionally requires the tenant to be 'eligible' which requires:</p> <ul style="list-style-type: none"> <li>a) the tenant's annual turnover ending 30 June 2019 to be less than \$50 million; and</li> <li>b) the tenant to either:</li> </ul>	



What leasing arrangements are caught?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
				<p>related factors, under the laws of Tasmania or the Cth</p> <p>b) reasonably required, in response to COVID-19 or the COVID-19 related factors, in order for the tenant or the landlord to comply with the laws of Tasmania or the Cth, does not, either during or after the Financial Hardship Period, amount to a breach of the lease and does not constitute grounds for the taking of any action by the landlord prohibited under the Act or the taking of any action by the tenant against the landlord. (Section 11)</p>	<p>A tenant is 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 or on their own behalf).</p> <p>(Regulations 3 and 5)</p>	<p>i. qualify for the JobKeeper Scheme under section 7; or</p> <p>ii. satisfy one of the JobKeeper Scheme's decline in turnover tests under section 8 at any time during the 'emergency period'.</p>	

Do the measures apply to licences, subleases and agreements to lease?

**WA:**

Yes (with a few exceptions)

A 'lease' is defined to include any lease, sub-lease, licence or other agreement under which a person grants a right to another person to occupy land or premises, whether or not the right is a right of exclusive occupation and whether oral or in writing (section 4).

**SA:**

No provisions, however:

- a) a retail shop lease under the *Retail and Commercial Leases Act 1995* includes an agreement under which a person grants or agrees to grant, for value, a right to occupy a retail shop (whether or not that right is of exclusive occupation); and
- b) the Regulations apply to any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business (whether or not the right is of exclusive occupation).

**VIC:**

Yes.

A "Commercial Licence" is defined to include a sub-licence or agreement for a licence or sub-licence, whether or not in writing or partly in writing, and whether express or implied. "Lease" is defined to include a sub-lease or an agreement for a lease or sub-lease, whether or not in writing or partly in writing, and whether express or implied. (Section 12)

**TAS:**

Yes.

The Act applies to agreement to lease and subleases.

A commercial "lease" is defined as a lease or an agreement, whether the lease or agreement is legal or equitable, and includes a lease or agreement, whether legal or equitable, under which a person grants, or agrees to grant, to another person, a right to occupy (for a term, periodically or at will) premises:

- a) whether or not the right is a right of exclusive possession; and
- b) whether the agreement is express or implied; and
- c) whether the agreement is oral or in writing or partly oral and partly in writing.

(Section 4)

**NT:**

Regulations are yet to be released.

**QLD:**

Yes

A lease under the Regulations includes a lease, sub-lease, licence or other agreement under which a person grants a right to another person to occupy premises, other than as a residence. (Section 23(8) of the *COVID-19 Emergency Response Act 2020*)

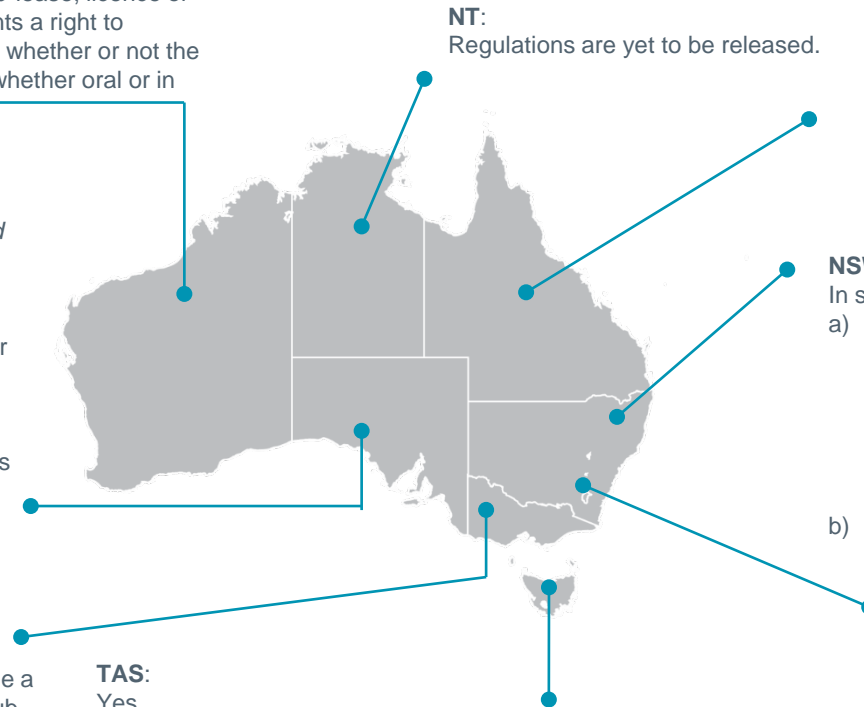
**NSW:**

In some cases, yes:

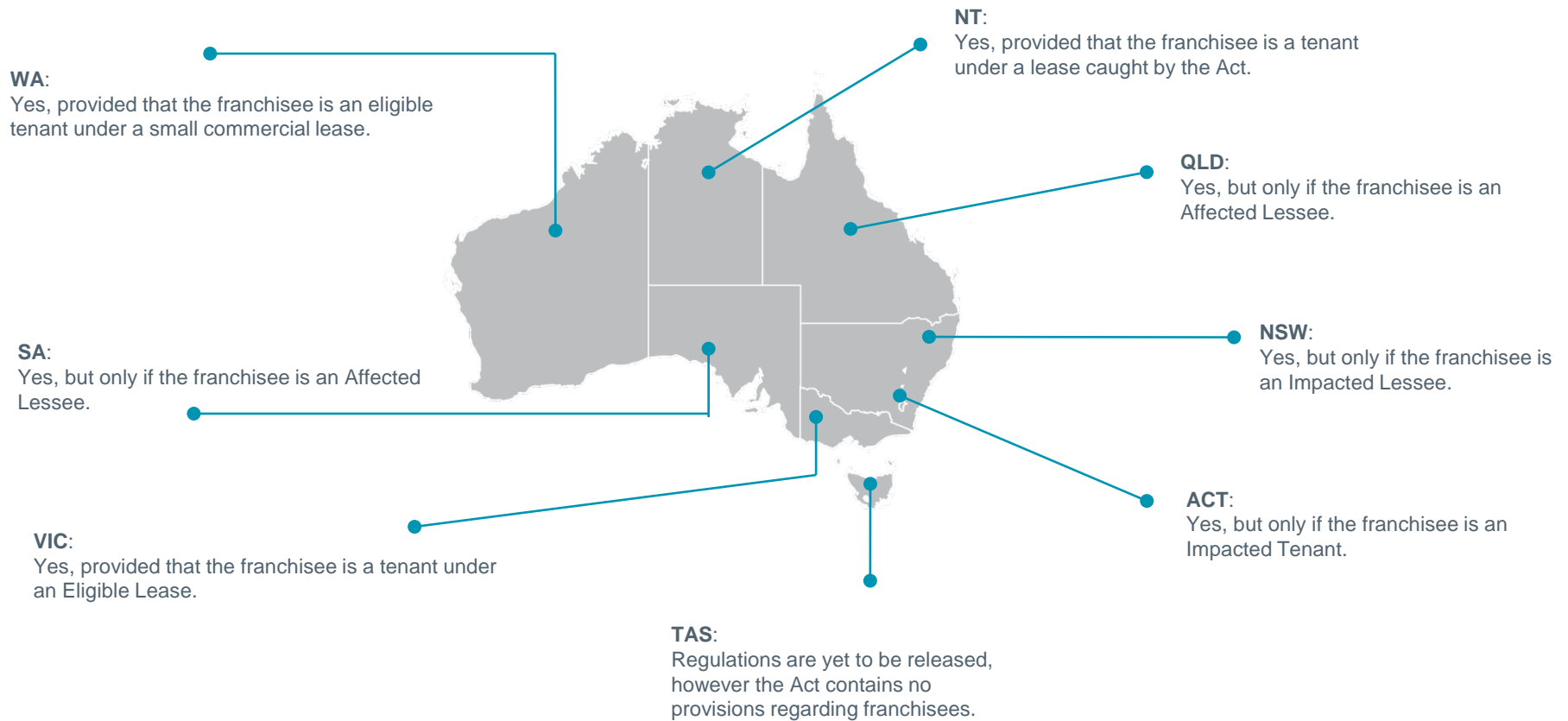
- a) a retail shop lease under the *Retail Leases Act 1994* (NSW) includes an agreement pursuant to which a person is granted for value a right of occupation (whether or not that right is a right of exclusive occupation which would include licences and subleases); and
- b) a lease under the *Conveyancing Act 1919* (NSW) includes a sublease.

**ACT:**

Yes, as per section 12(5) of the *Leases (Commercial and Retail) Act 2001* (Regulation 3(1))



Do the measures apply to franchisees?



Do the measures exclude certain leasing arrangements?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Yes.</p> <p>An Eligible Lease does not include leases in respect of premises which may be used wholly or predominantly for any of the following activities:</p> <p>a) agricultural, pastoral, horticultural or apicultural activities;</p> <p>b) poultry farming, dairy farming, aquaculture, tree-farming or any business that consists of the cultivation of soils, the gathering of crops or rearing of livestock;</p> <p>c) grazing, including agistment; or</p>	<p>Yes.</p> <p>The Declaration will not apply to:</p> <p>a) leases that fall outside the ambit of the <i>Leases (Commercial and Retail) Act 2001</i>;</p> <p>b) an incorporated charitable association that does not carry on a business;</p> <p>c) a listed public company or subsidiary of a public company with premises of an area of more than 1000m<sup>2</sup>; or</p> <p>d) a warehouse operator with no retail services; or</p> <p>e) leases that were entered into after 7 April 2020.</p> <p>(Regulation 3(1))</p>	<p>Yes.</p> <p>The Regulations do not apply to:</p> <p>a) a lease entered into after 24 April 2020, unless such a lease is entered into by means of an option to extend or renew an existing lease on the same terms; and</p> <p>b) a lease under the <i>Agricultural Tenancies Act 1990</i> (NSW).</p> <p>(Regulations 3 and 4 and 1 of Schedule 1)</p>	<p>Yes.</p> <p>The Regulations do not apply to the following leases:</p> <p>a) a lease under which the premises are to be used wholly or predominantly for a farming business under the <i>Farm Business Debt Mediation Act 2017</i> (Qld) sch 1; or</p> <p>b) a lease, permit, licence or sublease under the <i>Land Act 1994</i> (Qld), unless:</p> <p>i. it is a sublease of premises under a lease that has a rental category of 13 or 16 under that Act; and</p> <p>ii. the sublessor under the sublease is not a government leasing entity.</p> <p>(Regulation 5(4))</p>	<p>Yes, however the Regulations are yet to be released and may contain further excluded arrangements.</p> <p>The Act does not apply to a commercial leases relating to premises being occupied wholly or predominantly for business purposes by a tenant on behalf of the landlord.</p> <p>(Section 9(2))</p>	<p>Yes.</p> <p>The Regulations do not apply to:</p> <p>a) leases under the <i>Pastoral Land Management and Conservation Act 1989</i>; or</p> <p>b) leases under the <i>Crown Land Management Act 2009</i>.</p> <p>(Regulation 3(1))</p>	<p>Yes. The Act does not apply to:</p> <p>i. a long-stay agreement to which the <i>Residential Parks (Long-stay Tenants) Act 2006</i> applies;</p> <p>ii. a residential tenancy agreement to which the <i>Residential Tenancies Act 1987</i> applies;</p> <p>iii. a pastoral lease as defined in the <i>Land Administration Act 1997</i> section 3;</p> <p>iv. a mining tenement as defined in the <i>Mining Act 1978</i> section 8; or</p> <p>v. any other prescribed class of lease, sub-lease, licence or other agreement.</p>	<p>Generally no. Instead the Minister's power in emergency extends to issuing modification notices that may extend the making provisions in relation to aspects of business leases or occupation arrangements to which the principal Act does not otherwise apply.</p>

Do the measures exclude certain leasing arrangements?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
d) any activity prescribed for the purposes of paragraph (c) of the definition of farming operation in section 3 of the <i>Farm Debt Mediation Act 2011</i> (Vic). (Regulation 6)							

What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>During the Prescribed Period, a tenant under an Eligible Lease will not be in breach if the tenant does not pay the amount of rent required under that lease, provided that:</p> <p>a) the tenant makes a request for rent relief, as set out in the Regulations; and</p> <p>b) the tenant pays an amount of rent agreed with the landlord as part of the agreed rent relief during the Prescribed Period.</p> <p><i>(Regulation 9(1))</i></p> <p>If the tenant satisfies these preconditions, the landlord must not:</p>	<p>A landlord cannot take a "Prescribed Action" against an Impacted Tenant in relation to a "Prescribed Breach" unless the landlord has engaged in good faith negotiations with the tenant.</p> <p>A "Prescribed Breach" is the failure by an Impacted Tenant during the Prescribed Period to:</p> <p>a) pay rent; or</p> <p>b) to pay outgoings or any other money payable under the lease; or</p>	<p>During the Prescribed Period, a landlord must not take any prescribed action against an Impacted Lessee who breaches a Commercial Lease by failing to:</p> <p>a) pay rent or outgoings, or</p> <p>b) operating its business during hours specified in the lease.</p> <p>The Regulations also state that a Landlord cannot take a prescribed action against an Impacted Lessee who fails to pay rent unless rent relief negotiations have been pursued in accordance with the Regulations.</p>	<p>The Lessor must not take a Prescribed Action on the following grounds:</p> <p>(a) failure to pay rent for a period wholly or partly within the Response Period;</p> <p>(b) failure to pay outgoings for a period wholly or partly during the Response Period; or</p> <p>(c) the business not being open for business during the hours required by the lease during the Response Period.</p> <p>There are, however, exceptions to the above, where a lessor may take a Prescribed Action, including:</p>	<p>Subject to the Regulations (which are yet to be released), during or after the Financial Hardship Period, a landlord under a Protected Lease cannot take, or continue, any "prohibited lessor action" on the grounds of a breach of a Protected Lease consisting of:</p> <p>a) a failure to pay rent, fees, levies or charges;</p> <p>b) a failure to meet criteria based on sales performance or another prescribed factor;</p> <p>c) a failure to pay outgoings that are payable by the tenant to the landlord or another person;</p>	<p>If a tenant is an Affected Lessee a landlord cannot take any prescribed action against the tenant for a breach of a Commercial Lease during the Prescribed Period due to:</p> <p>a) a failure to pay rent or outgoings; or</p> <p>b) the business operating under the lease not being open during the hours specified in the lease.</p> <p><i>(Regulation 7(1))</i></p> <p>An act or omission of tenant, pursuant to a requirement under the laws of South Australia in response to the COVID-19 pandemic, will not:</p>	<p>A landlord cannot take 'prohibited' actions during the "emergency period" for a breach occurring in the "emergency period" which is:</p> <p>a) failure to pay rent or other money payable under the lease;</p> <p>b) failure to open the premises or business for business at the times required by the lease;</p> <p>c) other prescribed breaches (although none prescribed currently)</p> <p>"Prohibited actions" include actions to:</p> <ul style="list-style-type: none"> <li>• evict</li> <li>• re-enter</li> <li>• repossess</li> <li>• distraint goods</li> </ul>	<p>There is no prohibition on evictions provided for in the legislation.</p> <p>Instead, the Business Tenancies COVID-19 Modification Notice 2020 requires that a landlord must engage in a minimum of 30 days of good faith negotiation with a tenant to allow the tenant to remain in the premises before the landlord issues a notice to quit premises.</p> <p>The parties to an application for a notice to quit during the emergency period must bear their own costs.</p>

What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>a) evict (or attempt to evict) the tenant;</p> <p>b) re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises; or</p> <p>c) have recourse, or attempt to have recourse, to any security relating to the non-payment of rent, due to the tenant failing to pay rent as required under the Eligible Lease.</p> <p>A Landlord must also not take these steps during the same period where the tenant has reduced its trading hours or closed its premises and ceased to trade.</p>	<p>c) operate the business on the premises under the lease during the business hours as required under the lease.</p> <p><i>(Regulations 3(1) and 8(1))</i></p> <p>A "Prescribed Action" means-taking action under a lease or seeking orders or issuing proceedings in a court for:</p> <p>a) eviction from the premises;</p> <p>b) the exercise of a right of re-entry to the premises;</p> <p>c) recovery of premises or land;</p> <p>d) distraint of goods on the premises or land;</p>	<p>However, this section is inconsistent and potentially inadequate to overcome the blanket restriction on prescribed actions.</p> <p><i>(Regulation 6(1) and Regulation 4(1) of Schedule 1)</i></p> <p>Additionally, an act or omission of an Impacted Lessee required under a law of the Commonwealth or State in response to the COVID-19 pandemic:</p> <p>a) is taken not to amount to a breach of its lease, and</p>	<p>a) in accordance with:</p> <p>i. a variation of the lease made under the Regulations;</p> <p>ii. a settlement agreement or other agreement between the lessor and lessee entered into about a failure to pay rent or outgoings or the business not being open; or</p> <p>iii. an order of a court or tribunal,</p> <p>b) if, despite a genuine attempt by the lessor to negotiate rent payable and other conditions of the lease under the Regulations, the lessee has substantially failed</p>	<p>d) the business operating under the Protected Lease not being open for business during the hours, or on the days, specified in the Protected Lease;</p> <p>e) any other act or omission of a kind prescribed by any Regulations.</p> <p><i>(Section 13)</i></p> <p>"Prohibited Lessor Actions" means, during the Financial Hardship Period, a landlord under a Protected Lease:</p> <p>a) exercising, or attempting to exercise any right, power or remedy; or</p> <p>b) seeking orders or issuing proceedings in a court,</p>	<p>a) be taken to be a breach of the commercial lease, and</p> <p>b) constitute grounds for termination or the taking of any prescribed action by the landlord against the tenant.</p> <p><i>(Regulation 7(3))</i></p> <p>"Prescribed Actions" include taking action under a Commercial Lease or seeking orders or issuing proceedings in a court for:</p> <p>a) eviction from the premises;</p> <p>b) the exercise of a right of re-entry to the premises;</p> <p>c) recovery of land;</p>	<ul style="list-style-type: none"> <li>• forfeiture a lease</li> <li>• terminate of lease</li> <li>• claim damages</li> <li>• claim interest on unpaid rent</li> <li>• recover security including bonds</li> <li>• exercise guarantee rights (including making demand on bank guarantees)</li> <li>• pursue any other remedy available to a landlord.</li> </ul>	<p>A landlord does not have to engage in the minimum 30 day period of negotiations before issuing a notice to quit if:</p> <ul style="list-style-type: none"> <li>• the premises is used as a drug premises;</li> <li>• the notice to quit relates to illegal conduct on the premises; or</li> <li>• the notice to quit relates to conduct that caused or will cause substantial damage to the premises contrary to the business lease.</li> </ul>

What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Penalty: 20 penalty units. The penalties apply retrospectively.</p> <p><i>(Regulations 9, 10(2)-(4) and 18)</i></p>	<p>e) forfeiture;</p> <p>f) damages;</p> <p>g) a payment of interest on unpaid rent otherwise payable by the tenant;</p> <p>h) recovery of a security bond (whole or part);</p> <p>i) performance of obligations by the tenant or any other person pursuant to a guarantee;</p> <p>j) possession;</p> <p>k) termination; or</p> <p>l) any other remedy available to the landlord against the tenant at common law or under the law of the ACT.</p> <p><i>(Regulation 8(2))</i></p>	<p>b) does not constitute grounds for termination of the lease or the taking of any prescribed action by the landlord against the Impacted Lessee.</p> <p><i>(Regulation 6(5) and Regulation 4(5) of Schedule 1)</i></p> <p><b>"Prescribed actions"</b> include taking action under the provisions of a lease or seeking orders or issuing proceedings in a court or tribunal for any of the following:</p> <p>a) eviction;</p> <p>b) right of re-entry;</p> <p>c) recovery of the premises;</p>	<p>to comply with the lessee's obligations under the Regulations in relation to the negotiations; or</p> <p>c) on a ground that is not related to the effects of the COVID-19 emergency.</p> <p><i>(Regulation 12)</i></p> <p><b>A Prescribed Action</b> includes:</p> <p>a) recovery of possession;</p> <p>b) termination of the lease;</p> <p>c) eviction of the lessee;</p> <p>d) exercising a right of re-entry to premises;</p> <p>e) seizure of any property, including for the purpose of securing payment of rent;</p>	<p>in connection with any breach of the Protected Lease by the tenant. Without limitation, includes doing or attempting to do any of the following:</p> <p>a) evicting the tenant from the premises;</p> <p>b) exercising a right of re-entry;</p> <p>c) recovering land;</p> <p>d) distraining goods;</p> <p>e) forfeiture;</p> <p>f) damages;</p> <p>g) requiring a payment of interest, fee or charge, on unpaid rent;</p> <p>h) recovering the whole or part of a security bond, or bank guarantee;</p>	<p>d) distraint of goods (seizure of property in order to obtain payment of rent or other money);</p> <p>e) forfeiture;</p> <p>f) damages;</p> <p>g) a payment of interest on unpaid rent otherwise payable by the tenant;</p> <p>h) recovery of a security bond (whole or part);</p> <p>i) performance of obligations by the tenant or any other person pursuant to a guarantee;</p> <p>j) possession;</p> <p>k) termination; or</p>		



What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
		d) distraint of goods (seizure of property in order to obtain payment of rent or other money); e) forfeiture; f) damages; g) interest or a fee or charge on unpaid rent h) recovery of the whole or part of a security bond; i) performance of obligations pursuant to a guarantee; j) termination of the lease; or k) any other remedy otherwise available to the landlord at common law or under the law of NSW.  <i>(Regulation 3(1))</i>	f) forfeiture; g) damages; h) the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings; i) a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings; j) the performance of an obligation by the lessee or another person under a guarantee under the lease; k) exercising or enforcing another right by the lessor under the lease or other agreement relating to the leased premises.  <i>(Regulation 9)</i>	i) requiring the performance of pursuant to a guarantee, or indemnity; j) taking possession; k) termination of the lease; l) applying any other remedy of a landlord.  <i>(Section 7)</i> Subject to the Regulations, during or after the end of the Financial Hardship Period, a landlord under a Protected Lease: a) must not: <ul style="list-style-type: none"> <li>• exercise any right; or</li> <li>• make any claim,</li> </ul> for any "Relevant Reason"; and b) does not have any remedy in relation to a "Relevant Reason".	l) any other remedy available to the landlord against the tenant at common law or under the law of South Australia.  <i>(Regulation 3(1))</i>		

What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
		<p>Nothing in the Act and Regulations prevents a landlord from taking prescribed action on grounds not related to the economic impacts of the COVID-19 pandemic.</p> <p><i>(Regulation 10 and Regulation 8 of Schedule 1)</i></p>		<p><i>(Section 14(1))</i></p> <p><b>"Relevant Reason"</b> includes the tenant ceasing to:</p> <ul style="list-style-type: none"> <li>• trade;</li> <li>• carry on a business, trade or profession;</li> <li>• remain open to the public or customers.</li> </ul> <p><i>(Section 14(2))</i></p> <p>The landlord must also not apply any prohibition or levy any penalty in those circumstances.</p> <p><i>(Section 14(3))</i></p> <p>If, prior to the commencement of the Act:</p> <p>a) a landlord has commenced, but not yet completed, a Prohibited Lessor Action, or any other measure, in relation to a Protected Lease,</p>			

What prohibitions on evictions and other enforcement action by landlords are provided for in the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
				<p>that the landlord is not able to commence during the Financial Hardship Period by virtue of the provisions of the Act; or</p> <p>b) the operation of the terms and conditions of a Protected Lease has had effect, or has a periodic or ongoing effect, contrary to the provisions of the Act,</p> <p>the action, operation or effect, insofar as it remains incomplete or ongoing, or has a periodic or ongoing effect, is to be taken to be stayed or suspended until the end of the Financial Hardship Period.</p> <p>(Section 10)</p>			

What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>A tenant under an Eligible Lease may request rent relief from a landlord by written notice.</p> <p><i>(Regulation 10(1))</i></p> <p>On receipt of the tenant's request, the landlord under the Eligible Lease must make an offer of rent relief to the tenant within:</p> <ul style="list-style-type: none"> <li>a) 14 days after receiving that request; or</li> <li>b) a different timeframe agreed between the landlord and the tenant in writing.</li> </ul> <p><i>(Regulation 10(3))</i></p> <p>Following receipt of the landlord's offer, the tenant and landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the Prescribed Period.</p> <p><i>(Regulation 10(5))</i></p>	<p>A landlord or the Impacted Lessee may make a request to negotiate the rent payable under, and other terms of, a lease.</p> <p>The negotiations must be conducted in good faith and have regard to the economic impacts of the COVID-19 pandemic and the leasing principles set out in the Code.</p> <p><i>(Regulations 3(1) and 4)</i></p>	<p>A landlord or the Impacted Lessee may make a request to negotiate the rent payable under, and other terms of, a lease.</p> <p>The negotiations must be conducted in good faith and have regard to the economic impacts of the COVID-19 pandemic and the leasing principles set out in the Code.</p> <p><i>(Regulation 7 and Regulation 5 of Schedule 1)</i></p>	<p>Step 1 - A party to an Affected Lease asks another party, in writing, to the lease to negotiate the rent and other conditions of the lease.</p> <p>Step 2- The parties must as soon as practicable give information relating to the request that is:</p> <ul style="list-style-type: none"> <li>i. true, accurate, correct and not misleading; and</li> <li>ii. sufficient to enable the parties to negotiate in a fair and transparent way (<b>Sufficient Information</b>).</li> </ul> <p>Step 3 - Within 30 days after a party receives Sufficient Information about a request in Step 1, the lessor must offer the lessee a reduction in the amount of rent payable under the</p>	<p>Subject to the Regulations (which are yet to be released), a party to a Protected Lease may request the other party to the lease to renegotiate the rent payable under the Protected Lease.</p> <p><i>(Section 18)</i></p> <p>Additionally, during the Financial Hardship Period, a party to a Protected Lease must enter into and conduct (or continue to conduct), negotiations in relation to:</p> <ul style="list-style-type: none"> <li>the rent payable under the Protected Lease;</li> <li>if the tenant requests, the renewal of the lease; or</li> <li>if the tenant requests, the exercise by the tenant of an option.</li> </ul> <p><i>(Section 12(1))</i></p>	<p>The parties to a Commercial Lease and any guarantor or other person with an interest in the lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the Commercial Lease during the Prescribed Period, having regard to:</p> <ul style="list-style-type: none"> <li>a) the economic impacts of the COVID-19 pandemic on the parties to the lease;</li> <li>b) the provisions of the <i>Covid-19 Emergency Response Act 2020</i> and the Regulations; and</li> <li>c) the provisions of the Code.</li> </ul> <p><i>(Regulation 6)</i></p>	<p>The process involves 4 key Steps.</p> <p>Step 1 - An eligible tenant of a qualifying small commercial lease may request rent relief by written notice to the landlord (the notice must meet the minimum information requirements).</p> <p>Step 2 -The Landlord must offer Tenant rent relief to apply during the 'emergency period' in accordance with the Code's principles (clause 7) by no later than:</p> <ul style="list-style-type: none"> <li>a) 14 days of relief request; or</li> <li>b) other time if agreed by Landlord and Tenant.</li> </ul>	<p>No process. However businesses can apply for entry onto the NT Government's 'hardship register'. Qualifying businesses may be able to access relevant concessions such as for payroll tax, utilities and rates being offered as part of the Business Hardship Package.</p>

What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>lease and any proposed changes to other stated conditions.</p> <p>The lessor's offer must:</p> <ul style="list-style-type: none"> <li>a) relate to any or all of the rent payable under the Affected Lease during the Response Period;</li> <li>b) provide for no less than 50% of the rent reduction offered to be in the form of a waiver of rent; and</li> <li>c) have regard to:                             <ul style="list-style-type: none"> <li>i. all the circumstances of the lessee and the Affected Lease, including the reduction in turnover of the business carried on at the leased premises during the Response Period;</li> </ul> </li> </ul>			<p>Step 3 - The Landlord and Tenant must then negotiate with a view to agreeing rent relief to apply during 'emergency period' in accordance with the Code's principles and obligations (Div 2 and 3).</p> <p>Step 4 - The agreement reached is documented (where agreement is reached). Failing agreement, dispute resolution may be initiated by either landlord or tenant.</p>	

What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<ul style="list-style-type: none"> <li>ii. the extent to which a failure to reduce the rent payable under the lease would compromise the lessee's ability to comply with the lessee's obligations under the lease, including the payment of rent;</li> <li>iii. the lessor's financial position, including any financial relief provided to the lessor as a COVID-19 response measure; and</li> <li>iv. 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</li> </ul>				

What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>other outgoings— any reduction in, or waiver of, the amount payable.</p> <p>Step 4 - Once the lessor's offer has been received, the lessee and lessor must cooperate and act reasonably 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.</p> <p>Step 5 - Following an agreement between the parties, the agreement should be documented.</p> <p>Step 6 - If, after a reduction in the amount of rent is agreed between the parties to an Affected Lease a ground on which the agreement is based</p>				

What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>changes in a material way, a party may ask another party to the lease to negotiate a further reduction in rent during the Response Period.</p> <p>Steps 1 to 5 apply to the negotiations (except the lessor is not required to offer 50% of the further rent reduction as a rent waiver).</p> <p><i>(Regulations 14 &amp; 15)</i></p> <p><b>Negotiating a different agreement</b></p> <p>Nothing in the Regulations:</p> <ul style="list-style-type: none"> <li>a) prevents the parties to an Affected Lease entering into an agreement that is inconsistent with; or</li> <li>b) affects the validity of an agreement that is inconsistent with, the restrictions on taking</li> </ul>				



What is the process for requesting rent relief under the measures?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>Prescribed Actions or the process for negotiating rent reductions discussed above, regardless of whether the agreement is entered into before or after the commencement of the Regulations. Whilst this means lessors and lessees have the freedom to negotiate outside the suggested scope of the Regulations, the lessee retains its rights to request a rent renegotiation under the Regulations, despite any terms in the agreement seeking to curtail those rights.</p> <p><i>(Regulation 10)</i></p>				

What evidence does a tenant have to provide to a landlord at the time a request for rent relief is made?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>A request by a tenant for rent relief must be accompanied by:</p> <p>a) a statement by the tenant that the tenant's lease is an Eligible Lease and is not an excluded lease under the Regulations; and</p> <p>b) information that evidences that the tenant is an SME entity and qualifies for, and is a participant in, the JobKeeper scheme.</p> <p><i>(Regulation 10(2))</i></p>	<p>The Guidelines issued by the ACT Government in addition to the Declaration note that a tenant will need to provide evidence of the financial impact that COVID-19 had had on turnover. The Guidelines also propose that the method to calculate the reduction in turnover should be that published on the Australian Taxation Office website and be derived from recognised accounting systems. If a tenant has qualified for payments under the JobKeeper Scheme, this will likely be able to confirm a reduction in turnover of 30%, however any greater reduction in turnover will need</p>	<p>No provisions, however a tenant would be required to show that it is an Impacted Lessee.</p>	<p>The parties must provide information which is:</p> <p>a) true, accurate, correct and not misleading; and</p> <p>b) sufficient to enable the parties to negotiate in a fair and transparent way <b>(Sufficient Information)</b>.</p> <p>Sufficient Information includes:</p> <p>a) a clear statement about the terms of the lease the initiator is seeking to negotiate</p> <p>b) a statement by the lessee that demonstrates why the lease is an Affected Lease, accompanied by supporting information and evidence, including:</p>	<p>No provisions.</p>	<p>No provisions.</p> <p>However, if the Court makes a determination as to whether or not a tenant is an Affected Lessee, the Court must have regard to:</p> <p>a) whether or not the tenant is eligible for, or is receiving, a JobKeeper payment in respect of the business of the tenant (whether in their capacity as an employer or on their own behalf);</p> <p>b) any reduction in turnover of the business of the tenant (as verified by financial records or statements provided by the tenant) during a specified period as compared with another specified period determined by</p>	<p>The request must satisfy the minimum information requirements, which are:</p> <p>a) a statement that:</p> <p>i. the tenant's lease is a 'small commercial lease': and</p> <p>ii. the tenant is an 'eligible tenant' in relation to the small commercial lease;</p> <p>b) sufficient and accurate evidence that the tenant is an eligible tenant; and</p> <p>c) sufficient and accurate evidence of the reduction in the tenants business turnover at the leased premises during the 'emergency period'.</p>	<p>No process. But see notes above on the above NT Government's 'hardship register' and how qualifying businesses may be able to access relevant concessions such as for payroll tax, utilities and rates being offered as part of the Business Hardship Package.</p>

What evidence does a tenant have to provide to a landlord at the time a request for rent relief is made?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
	to be substantiated. <i>(ACT Government Response on Commercial Tenancies Guidance Notes)</i>		<ul style="list-style-type: none"> <li>i. accurate financial information or statements about the turnover of the lessee's business</li> <li>ii. information demonstrating that the lessee is an SME entity, having regard to any entities that the lessee is connected with, or an affiliate of</li> <li>iii. evidence of the lessee's eligibility for, or participation in, the JobKeeper scheme</li> <li>iv. information about any steps the lessee has taken to mitigate the effects of the COVID-19 emergency on the lessee's business,</li> </ul>		<p>the Court as being relevant to the circumstances of whether or not the tenant is suffering financial hardship as a result of COVID-19.</p> <p>This ultimately allows the Court to determine the scope of the financial records or statements to be provided by the tenant and what "specified periods" are appropriate for conducting a comparison of the business' turnover.</p> <p><i>(Regulation 9(4))</i></p>		

What evidence does a tenant have to provide to a landlord at the time a request for rent relief is made?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>including the details of any assistance being received by the lessee from the Commonwealth, State or a local government; and</p> <p>c) in relation to a franchisor— information about any concession or benefit provided to or by the franchisor in relation to rent or outgoings for the premises occupied by the franchisee, and any undertakings to pass those concessions or benefits on to the franchisee.</p> <p><i>(Regulation 14)</i></p>				

What are the considerations for rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>A landlord's offer of rent relief must be based on all the circumstances of the Eligible Lease and:</p> <ul style="list-style-type: none"> <li>a) relate to up to 100% of the rent payable under the Eligible Lease for the Prescribed Period;</li> <li>b) provide that no less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless a landlord and a tenant otherwise agree in writing;</li> <li>c) apply for the Prescribed Period; and</li> <li>d) take into account</li> </ul>	<p>No provisions, however the parties are required to renegotiate the rent payable having regard to the economic impacts of the COVID-19 pandemic and the principles set out in the Code.</p> <p><i>(Regulation 4)</i></p>	<p>The parties must have regard to:</p> <ul style="list-style-type: none"> <li>a) the economic impacts of the COVID-19 pandemic, and</li> <li>b) the leasing principles set out in the Code.</li> </ul>	<p>The Lessor's offer must:</p> <ul style="list-style-type: none"> <li>a) relate to any or all of the rent payable under the Affected Lease during the Response Period;</li> <li>b) provide for no less than 50% of the rent reduction offered to be in the form of a waiver of rent; and</li> <li>c) have regard to                             <ul style="list-style-type: none"> <li>i. all the circumstances of the lessee and the Affected Lease, including the reduction in turnover of the business carried on at the leased premises during the Response Period;</li> </ul> </li> </ul>	<p>Subject to the Regulations (which are yet to be released), when renegotiating any term of a Protected Lease, each party to a Protected Lease must have regard to:</p> <ul style="list-style-type: none"> <li>a) the following factors:                             <ul style="list-style-type: none"> <li>• the degree of financial hardship of the landlord and of the tenant;</li> <li>• whether the Protected Lease has expired and the lease is being held over or whether the Protected Lease is about to expire; and</li> </ul> </li> </ul>	<p>The parties must have regard to:</p> <ul style="list-style-type: none"> <li>a) the economic impacts of the COVID-19 pandemic on the parties to the lease;</li> <li>b) the provisions of the <i>Covid-19 Emergency Response Act 2020</i> and the Regulations; and</li> <li>c) the provisions of the Code.</li> </ul> <p><i>(Regulation 6)</i></p> <p>If a Court application is made and the Court decides to make an order granting rent relief to an Affected Lessee, then at least 50% of the rent relief must be in the form of a waiver and the Court must have regard to:</p>	<p>Landlord's offer must be made, and the negotiations must occur with a view to agreeing rent relief to apply during 'emergency period' in accordance with the following Code obligations and principles (Div 2 and 3):</p> <p><i>Obligations</i> - The landlord and tenant must each:</p> <ul style="list-style-type: none"> <li>• co-operate;</li> <li>• act reasonably and in good faith;</li> <li>• act openly, honestly and transparently;</li> <li>• provide sufficient and accurate information that is reasonable in the circumstances of the negotiation;</li> <li>• not make onerous demands for information.</li> </ul>	<p>No process. But see notes above.</p>

What are the considerations for rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<ul style="list-style-type: none"> <li>the reduction in a tenant's turnover associated with the premises during the Prescribed Period;</li> <li>any waiver of outgoings given by the landlord in accordance with the Regulations;</li> <li>whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil its ongoing obligations under the Eligible Lease, including as to the payment of rent;</li> </ul>			<ul style="list-style-type: none"> <li>ii. the extent to which a failure to reduce the rent payable under the lease would compromise the lessee's ability to comply with the lessee's obligations under the lease, including the payment of rent;</li> <li>iii. the lessor's financial position, including any financial relief provided to the lessor as a COVID-19 response measure; and</li> </ul>	<ul style="list-style-type: none"> <li>b) in relation to the renegotiation of rent:                             <ul style="list-style-type: none"> <li>the leasing principles set out in the National Code of Conduct; and</li> <li>any prescribed matters under any Regulations.</li> </ul> </li> </ul> <p>(Sections 12(2) and 18(3))</p>	<ul style="list-style-type: none"> <li>a) the obligations of the landlord under the Covid-19 Emergency Response Act 2020, Real Property Act 1986, Retail and Commercial Leases Act 1995, the Landlord and Tenant Act 1936 and the Regulations;</li> <li>b) the reduction in turnover of the business of the tenant during the Prescribed Period;</li> <li>c) whether the landlord has, during the Prescribed Period, agreed to waive recovery of any outgoings or other expense payable by the tenant;</li> </ul>	<p><i>Principle 1</i> - Landlord's offer must apply to the 'emergency period'.</p> <p><i>Principle 2</i> - Landlord's offer must be proportionate to the reduction in tenant's turnover from the leased premises during the 'emergency period' [Code example states a 60% reduction in turnover should result in an offer of at least 60% rent relief.]</p> <p><i>Principle 3</i> - Unless agreed otherwise, the decline in turnover is calculated using the section 8 tests from the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth), with any modifications appropriate to reflect the above Principle 2.</p>	

What are the considerations for rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<ul style="list-style-type: none"> <li>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</li> <li>any reduction to any outgoings charged, imposed or levied in relation to the premises.</li> </ul> <p>(Regulation 10(4))</p>			<p>iv. if a portion of rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings—any reduction in, or waiver of, the amount payable.</p> <p>(Regulation 15)</p>		<p>d) whether a failure to provide rent relief would compromise the tenants ability to fulfil its ongoing obligations under the lease, including the payment of rent;</p> <p>e) the ability of the landlord to provide rent relief, including any relief provided to the landlord by a third party in response to the Covid-19 pandemic;</p> <p>f) any reduction by a third party to outgoings in relation to the premises the subject of the lease; and</p> <p>g) any other matter the Court thinks fit.</p> <p>(Regulation 9(8))</p>	<p><i>Principle 4</i> - Rent relief may be up to as much as 100%.</p> <p><i>Principle 5</i> - Unless agreed otherwise, not less than 50% of relieved rent can be by waiver.</p> <p><i>Principle 6</i> - More than 50% of relieved rent must be by waiver if: - by not giving more this would compromise the tenant's capacity to comply with ongoing lease obligations AND the Landlord has the financial capacity to give more than 50% by waiver.</p> <p><i>Principle 7</i> - If the landlord is 'sub lessor' under a 'head lease', any rent relief benefit under the head lease must be passed on to the tenant.</p> <p><i>Amortisation Principle</i> - Unless the Landlord and Tenant otherwise agree, deferred rent.</p>	

How is turnover determined?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Turnover is calculated by reference to the most recent financial year (except where it is being estimated for the current financial year) and is the total of the following that is earned in that financial year in the course of the tenant's business:</p> <ul style="list-style-type: none"> <li>a) the proceeds of sales of goods and/or services;</li> <li>b) commission income;</li> <li>c) repair and service income;</li> <li>d) rent, leasing and hiring income;</li> <li>e) government bounties and subsidies;</li> <li>f) interest, royalties and dividends; and</li> <li>g) other operating income.</li> </ul>	<p>Turnover is calculated by reference to the 2018-2019 financial year and the calculation of turnover must include internet sales of goods or services.</p> <p>See note above in relation to an Impacted Tenant and turnover.</p> <p><i>(Regulation 3 and ACT Government Response on Commercial Tenancies Guidance Notes)</i></p>	<p>Turnover is not defined. We consider the better view is that turnover will have its ordinary meaning.</p> <p>Any calculation of turnover must include internet sales of goods or services.</p> <p><i>(Regulation 4(2) and Regulation 2(2) of Schedule 1)</i></p> <p>In determining an Impacted Lessee's turnover:</p> <ul style="list-style-type: none"> <li>a) if the Impacted Lessee is a franchisee, the turnover is that of the business conducted at the relevant leased premises;</li> <li>b) if the Impacted Lessee is a corporation that is a member of a group, the turnover is that of the group; and</li> </ul>	<p>Under the Regulations, the turnover of a business is defined to include income earned from internet sales but does not include a grant or assistance given by the Commonwealth, State or a local government to mitigate the effects of the COVID-19 emergency. The Regulations do not otherwise provide specific examples of what may or may not be considered in determining a lessee's turnover.</p> <p>However, the meaning of an SME entity (which is relevant in the context of determining whether a lease is an Affected Lease) may provide some guidance. Section 5 of the <i>Guarantee of Lending to Small and Medium Enterprises</i></p>	<p>No provisions.</p>	<p>Turnover is not defined in the Regulations. We consider the better view is that turnover will have its ordinary meaning.</p> <p>Any calculation of turnover must include internet sales of goods or services.</p> <p>Turnover is determined by reference to the 2018-2019 financial year (or a 12 month period or such lesser period determined by the Court or the Minister) and:</p> <ul style="list-style-type: none"> <li>a) if the tenant is a franchisee, the turnover is that of the business conducted by the tenant at the leased premises;</li> <li>b) if the tenant is a corporation that is a member of a group, the turnover is that of the group;</li> </ul>	<p>must be amortised starting on the earlier of:</p> <ul style="list-style-type: none"> <li>a) the day on which the emergency period ends (currently 29 September 2020); and</li> <li>b) the expiry of the term of the lease, and ending on the later of: <ul style="list-style-type: none"> <li>c) the end of the term of the lease (before any extension under the Code or otherwise); and</li> <li>d) 24 months.</li> </ul> </li> </ul> <p><i>Extension Principle</i> - The Landlord must (other than with a few exceptions) offer the Tenant an extension of the term of the lease (on the same terms as the existing lease), for a period equivalent to the period for which the rent is deferred.</p>	<p>No process. But see notes above.</p>



How is turnover determined?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Turnover includes any income derived from internet sales of goods and services.</p> <p>If the tenant is a member of a corporate group, the relevant turnover is the aggregate turnover of the corporate group. If the tenant is an affiliate of another entity, the relevant turnover is the aggregate turnover of the eligible tenant and the other entity. In any other case, the relevant turnover is the turnover of the business conducted by the eligible tenant.</p> <p><i>(Section 13(3) and Regulation 5)</i></p>		<p>c) in any other case, the turnover is that of the business conducted by Impacted Lessee.</p> <p><i>(Regulation 4(1)(b) and Regulation 2(1)(b) of Schedule 1)</i></p>	<p><i>(Coronavirus Economic Response Package) Rules 2020 (Cth)</i> provides that 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"> <li>a) the proceeds of sales of goods and/or services;</li> <li>b) commission income;</li> <li>c) repair and service income;</li> <li>d) rent, leasing and hiring income;</li> <li>e) government bounties and subsidies;</li> <li>f) interest, royalties and dividends; and</li> <li>g) other operating income.</li> </ul> <p><i>(Regulation 5)</i></p>		<p>c) in any other case, the turnover is that of the business conducted by the tenant at the leased premises.</p> <p><i>(Regulation 3(2))</i></p>		

How must rent relief be documented?

**WA**

- Rent relief may be documented as —
- a) a written variation to the small commercial lease; or
  - b) any other written agreement that gives effect to the rent relief, either directly or indirectly (Regulation 8).

**SA:**  
No provisions.

- VIC:**  
Rent relief may be given effect by the landlord and tenant by:
- a) a variation to the Eligible Lease; or
  - b) any other agreement between them that gives effect to the rent relief, either directly or indirectly.
- (Regulation 10(6))

**TAS:**  
No provisions.

**NT:**  
No process. But see notes above.

- QLD:**  
Any reduction in rent and any conditions relating to the reduction in rent may be given effect by:
- a) a variation to the lease; or
  - b) another agreement between the parties that gives effect to the matters agreed to.
- (Regulation 15)

**NSW:**  
No provisions.

**ACT:**  
No provisions.



Can the tenant apply for additional rent relief?

**WA:**  
Yes. The tenant may request further relief (and so effectively repeat the process) if the tenant's financial circumstances change materially during the 'emergency period'.

**SA:**  
No provisions.

**VIC:**  
Yes.  
If the financial circumstances of a tenant under an Eligible Lease materially change after agreement has been reached with a landlord on rent relief, the tenant may make a further request and must follow the same process set out in the Regulations. The landlord will not be obliged to offer more than 50% of the rent relief offered in the form of a rent waiver in any subsequent offer for rent relief.  
(Regulation 11)

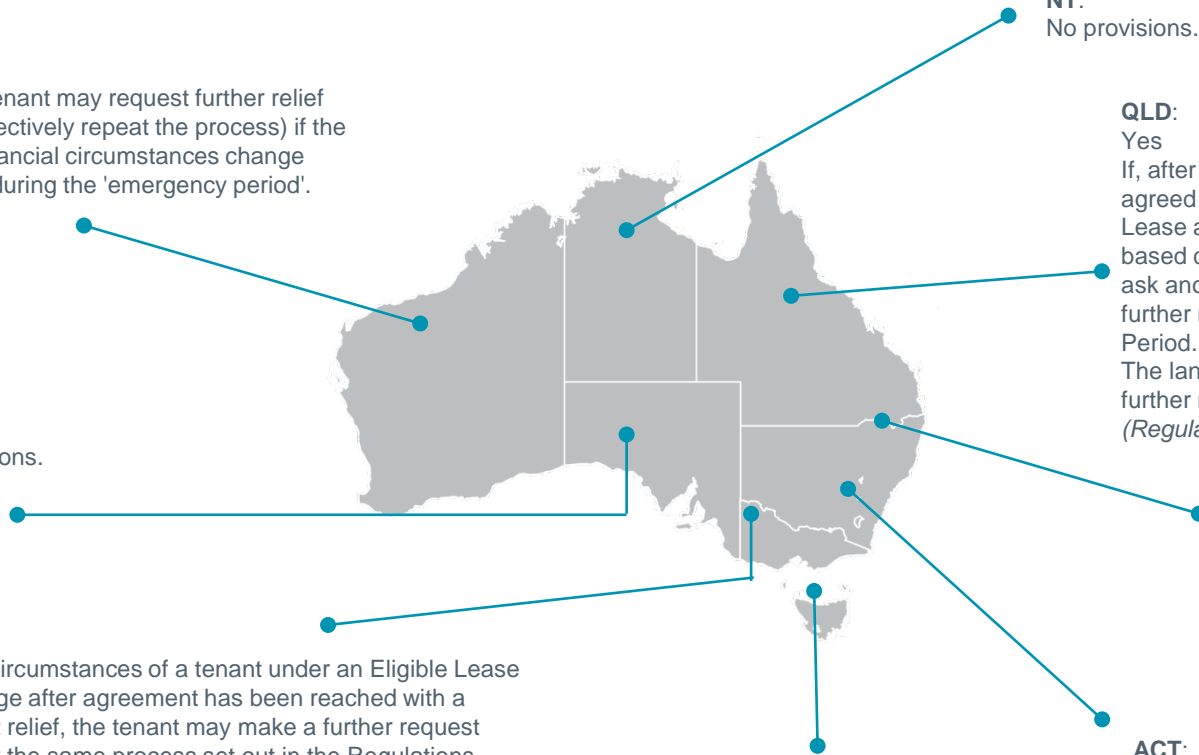
**TAS:**  
No provisions.

**NT:**  
No provisions.

**QLD:**  
Yes  
If, after a reduction in the amount of rent is agreed between the parties to an Affected Lease a ground on which the agreement is based changes in a material way, a party may ask another party to the lease to negotiate a further reduction in rent during the Response Period. The landlord is not required to offer 50% of the further rent reduction as a rent waiver.  
(Regulation 16)

**NSW:**  
No provisions.

**ACT:**  
No provisions.



If part of the rent relief includes deferred rent, when is the deferred rent paid?

**WA:**

Unless the Landlord and Tenant otherwise agree, deferred rent must be amortised starting on the earlier of:

- a) the day on which the emergency period ends (currently 29 September 2020); and
- b) the expiry of the term of the lease, and ending on the later of:
- c) the end of the term of the lease (before any extension under the Code or otherwise); and
- d) 24 months.

**SA:**

No provisions, however, if the Court makes an order to defer the payment of rent for a specified period, the period must not exceed 24 months from the day on which the order is made.

**VIC:**

Unless otherwise agreed by the landlord and tenant:

- a) a landlord and tenant must vary the Eligible Lease or otherwise agree so that tenant must pay the deferred rent to the landlord amortised over the greater of:
  - the balance of the term of the Eligible Lease, including any agreed extension to that term by the landlord and tenant; and
  - a period of no less than 24 months
 with the method of amortisation to be agreed by the landlord and tenant; and
- b) a landlord under an Eligible Lease must not request payment of any part of the deferred rent until the earlier of:
  - 29 September 2020; and
  - the expiry of the term of the Eligible Lease, before any agreed extension to that term.

(Regulation 16)

**NT:**

No provisions.

**QLD:**

If the parties agree to defer the payment of rent during their negotiations the variation of the lease or the agreement between the parties must:

- a) not require payment of the deferred rent to commence until the day after the end of the Response Period;
- b) require payment of the deferred rent to be amortised, using a method agreed between the parties, over a period of at least 2 years but no more than 3 years; and
- c) provide that the lessor must not, under the lease, require the lessee to pay interest or any other fee or charge in relation to an amount of deferred rent, unless the lessee fails to comply with the conditions on which the rent is deferred.

(Regulation 17)

**ACT:**

No provisions.

**NSW:**

No provisions.

**TAS:**

No provisions.



Is there a restriction on rent increase?

**WA:**  
All rent increases are prohibited during the 'emergency period', unless turnover rent.  
(Section 11)

**SA:**  
Yes.  
If, during the Prescribed Period, a tenant is an Affected Lessee, the rent must not, unless otherwise agreed between the landlord and tenant, be increased (other than rent or a component of rent determined by reference to turnover).  
(Regulation 7(4))

**VIC:**  
Yes.  
Except where a retail lease provides for rent to be determined by reference to the volume of trade of a tenant's business, a landlord under an Eligible Lease must not increase the rent payable at any time during the Prescribed Period, unless otherwise agreed by parties.  
(Regulation 12)

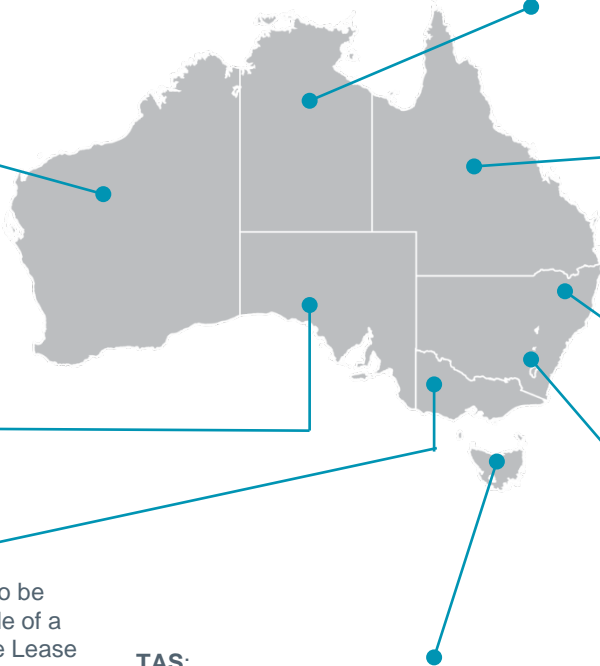
**TAS:**  
Yes.  
Subject to the Regulations (which are yet to be released), unless a tenant agrees, an amount of rent that is or would be under a Protected Lease an increase in the amount of rent payable during the Financial Hardship Period is not payable during or after the Financial Hardship Period if the increase occurs while the lease is a Protected Lease.  
(Section 17)

**NT:**  
No provisions.

**QLD:**  
Yes.  
A lessor under an Affected Lease must not increase the rent payable by the lessee during the Response Period.  
If the lease provides for a review of rent during the Response Period, the lessor may review the rent under the lease but must not give effect to, and rent will not start to accrue under, an increase in rent until after the Response Period.  
This provision does not apply to the payment of turnover rent.  
(Regulation 13)

**NSW:**  
Yes.  
If the tenant is an Impacted Lessee, the rent payable under the lease cannot be increased during the Prescribed Period, except rent or a component of rent determined by reference to turnover.  
(Regulation 6(2) and Regulation 4(2) of Schedule 1))

**ACT:**  
No provisions.



Do the measures contain any tenant rights to extend leases?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Yes.</p> <p>If the payment of any rent under an Eligible Lease is deferred by agreement, the landlord must offer the tenant an extension to the term of the Eligible Lease on the same terms and conditions that applied under the Eligible Lease before 29 March 2020.</p> <p>The extension offered must be equivalent to the period for which rent is deferred, unless otherwise agreed.</p> <p><i>(Regulation 13)</i></p>	<p>No provisions.</p>	<p>No provisions.</p>	<p>Yes.</p> <p>If the parties agree to waive rent or defer the rent for a period, the lessor must offer the lessee an extension to the term of the lease for the equivalent period for which rent is waived or deferred. The extension must be on the same conditions, except that the rent payable during the extension must be adjusted for the waiver or deferral.</p> <p>The lessor is not required to offer an extension if the lessor:</p> <ul style="list-style-type: none"> <li>a) is subject to an existing legal obligation that is inconsistent with the obligation to extend the lease; or</li> </ul>	<p>Yes.</p> <p>Subject to the Regulations (which are yet to be released), during the Financial Hardship Period, a landlord under a Protected Lease must, at the request of the tenant, extend the period of the Protected Lease:</p> <ul style="list-style-type: none"> <li>a) until the end of the Financial Hardship Period, or any longer period agreed by parties; and</li> <li>b) on terms and conditions, that are to apply until the end of the Financial Hardship Period, or, if agreed between the parties, a longer period in accordance with the Act,</li> </ul>	<p>If a Court application is made and the Court makes 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, the Court may also make an order extending the term of the lease for the period for which rent is deferred.</p> <p><i>(Regulation 9(9))</i></p>	<p>Yes. The Landlord must (other than with a few exceptions) offer the Tenant an extension of the term of the lease (on the same terms as the existing lease), for a period which unless otherwise agreed, is equivalent to the period for which the rent is deferred</p> <p><i>(Section 9)</i></p>	<p>No provisions.</p>

Do the measures contain any tenant rights to extend leases?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
			<p>b) demonstrates that the lease cannot be extended because the lessor intends to use the leased premises for a commercial purpose of the lessor. <i>(Regulation 18)</i></p>	<p>except where:</p> <p>c) the Protected Lease is a sublease and the head lease has ceased or will cease to apply before the end of the Financial Hardship Period;</p> <p>d) the landlord has entered into, or agreed to enter into, a lease of the premises that is to take effect on the expiry of the lease of the Protected Lessee;</p> <p>e) the landlord intends to occupy the premises for the purposes of carrying on a business of the landlord (other than the business of leasing premises); or</p>			

Do the measures contain any tenant rights to extend leases?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
				f) prescribed circumstances apply in relation to the Protected Lease or the landlord under any Regulations.  <i>(Section 15)</i>			



How do the measures regulate the recovery of outgoings?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>A landlord under an Eligible Lease must consider waiving the recovery of any outgoing or other expense payable by a tenant for any part of the Prescribed Period that the tenant is not able to operate its business at the premises.</p> <p>If a tenant is not able to operate its business during any part of this time, the landlord may cease to provide, or reduce the provision of, any service at the premises:</p> <p>a) as is reasonable in the circumstances; and</p> <p>b) in accordance with any reasonable request of the tenant.</p> <p><i>(Regulation 14)</i></p> <p>If any outgoings charged, imposed or levied in relation</p>	<p>No provisions.</p>	<p>If an Impacted Lessee is required by a provision of a Commercial Lease to pay a fixed amount that represents:</p> <p>a) an amount of land tax or any other statutory charge (such as local council rates) or insurance payable by a landlord; and</p> <p>b) the amount of the land tax or other statutory charge or insurance payable is reduced,</p> <p>c) the Impacted Lessee is exempted from the operation of the provision to the extent of the reduction.</p> <p><i>(Regulation 6(4) and Regulation 4(4) of Schedule 1)</i></p>	<p>If the lessee is an Affected Lessee, the lessor cannot terminate the lease if the grounds of termination are (amongst other things) the Affected Lessee's failure to, during the Response Period pay outgoings.</p> <p>Also, the Regulations prohibit lessors under Affected Leases from calling on any security provided by an Affected Lessee or any other person securing the performance of the Affected Lessee's obligations under the Affected Lease during the Response Period due to the Affected Lessee's failure to (amongst other things), during the Response Period pay outgoings.</p> <p><i>(Regulations 9 and 12)</i></p>	<p>No provisions.</p>	<p>A landlord must not, during the Prescribed Period, require an Affected Lessee to pay land tax or reimburse the landlord for the payment of land tax.</p> <p>The Regulations also require a landlord who receives a waiver of land tax or a relief payment under a scheme administered by the Treasurer for the purpose of providing and tax relief, to pass on the benefit of the waiver or relief payment in the form of a waiver of rent payable by an Affected Lessee in accordance with the provisions of that scheme.</p> <p><i>(Regulations 7(5) and 7(7))</i></p>	<p>A landlord of 'small commercial lease' premises with an 'eligible' tenant must consider waiving the recovery of any outgoing or other expense payable by a tenant for any part of the emergency period that the tenant is not able to conduct its business at the premises.</p> <p>The landlord gains a corresponding right to cease to provide, or reduce a service at the premises —</p> <p>a) if reasonable in the circumstances; or</p> <p>b) if in accordance with a reasonable request of the tenant.</p> <p><i>(Regulation 11)</i></p>	<p>Eligible businesses are entitled to relief, including:</p> <ul style="list-style-type: none"> <li>• waiving or deferring payment of payroll tax;</li> <li>• reducing utilities bills by up to 50%;</li> <li>• reducing or deferring rates; and</li> <li>• other relief which may be offered from time-to-time agreed to by the responsible minister.</li> </ul> <p>A business which meets the following criteria may apply:</p> <ul style="list-style-type: none"> <li>• is a legal entity that holds a valid Australian business number (ABN) as at 23 March 2020;</li> <li>• is a Territory enterprise;</li> </ul>

How do the measures regulate the recovery of outgoings?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>to premises subject to an Eligible Lease are reduced:</p> <p>a) a landlord must not require a tenant under the lease to pay any amount in respect of that outgoing that is greater than a tenant's proportional share of the reduced outgoing payable under the Eligible Lease; and</p> <p>b) if a tenant has already paid to a landlord under the Eligible Lease an amount greater than a tenant's proportional share of the reduced outgoing, the landlord must reimburse the excess amount to a tenant as soon as possible.</p> <p><i>(Regulation 15)</i></p>						<p>If a landlord's outgoings expenses are reduced in the emergency period, any reductions must be passed through to an 'eligible tenant of a 'small commercial lease' as soon as possible</p> <p><i>(Regulation 12)</i></p> <p>Also, the Act prohibit landlords under 'small commercial leases' from taking any 'prohibited action' during the 'emergency period' where based on any outgoings payment breach occurring in the 'emergency' period'</p> <p><i>(Sections 8 and 9)</i></p>	<ul style="list-style-type: none"> <li>• must not be a government agency, government owned body, statutory corporation, or local government;</li> <li>• has an annual turnover of no more than \$50 million; and</li> <li>• has experienced hardship (a reduction in turnover of 30% or more due to COVID-19).</li> </ul>

Is a tenant required to pay default interest?

**WA:**

The Act prohibits landlords under 'small commercial leases' from charging any interest based on any unpaid rent or outgoings which occurs during the 'emergency' period'.  
(Sections 8 and 9)

**SA:**

If a tenant is an Affected Lessee, a landlord cannot, during the Prescribed Period, take action under the provisions of a Commercial Lease or seek orders or issue proceedings in a court for the payment of interest on unpaid rent otherwise payable.  
(Regulations 7(1) and 3(1))

**VIC:**

No.  
A landlord under an Eligible Lease must not require a tenant to pay interest or any other fee or charge in relation to any payment of rent deferred by agreement between parties.  
(Regulation 17)

**TAS:**

Subject to the Regulations (which are yet to be released), no. A landlord must not, during or after the end of the Financial Hardship Period, levy any penalty, that, but for the Act and Regulations would be payable by the tenant under a Protected Lease, because of a Relevant Reason or because the tenant ceased to trade or remain open during any of the hours or days it was required to do so.  
(Sections 14(1)(c) and 14(3))

**NT:**

No provisions.

**QLD:**

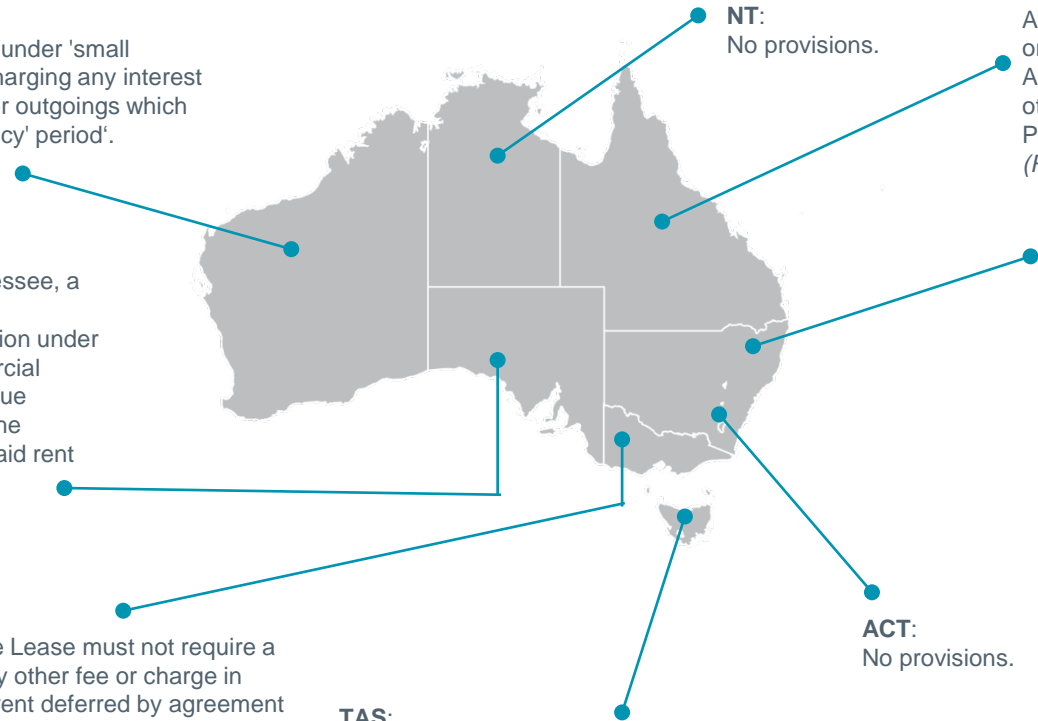
The Regulations prohibit lessors under Affected Leases from charging interest on unpaid rent or outgoings due to the Affected Lessee's failure to (amongst other things), during the Response Period pay rent and outgoings.  
(Regulation 9 and 12)

**NSW:**

If a tenant is an Impacted Lessee, a landlord must not, during the Prescribed Period, take action under the provisions of a Commercial Lease or seek orders or issue proceedings in a court, requiring payment of interest on, or a fee or charge related to, unpaid rent, unless and until the Landlord has complied with its obligations to renegotiate rent in accordance with the Regulation.  
(Regulations 1, 2, 3 and Regulation 6 of Schedule 1)

**ACT:**

No provisions.



How do the measures apply to a corporate group?

**WA:**

If the tenant is a corporate tenant and also part of a corporate group, the relevant 'turnover' measure is the corporate group's turnover. *(Regulation 2)*

**SA:**

If a tenant is a member of a corporate group, turnover for the purposes of the Regulations is that of the corporate group. *(Regulation 3(2))*

**VIC:**

The Act and Regulations do not apply where a tenant is a member of a corporate group for income taxation purposes (ie. the tenant controls or is controlled by another entity, or both entities are controlled by the same third entity) and the aggregate turnover of the group is more than AUD50 million. The Regulations also do not apply if the tenant is an affiliate of another entity for income taxation purposes (ie. that entity acts in accordance with the tenant's directions or wishes in relation to the affairs of the entity's business) and the aggregate turnover of the tenant and the other entity exceeds AUD50 million. *(Section 3(3) and Regulations 7)*

**NT:**

No provisions

**QLD:**

The Regulations provide that for the purposes of working out whether a lessee is an SME entity (which is relevant in the context of determining whether a lease is an Affected Lease), the lessee's annual turnover is:

- if the lessee is an entity connected with, or an affiliate of, another entity - the aggregate annual turnover of the entities; or
- otherwise - the annual turnover of the business carried on by the lessee at the premises.

The Regulations also 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. *(Regulation 5)*

**NSW:**

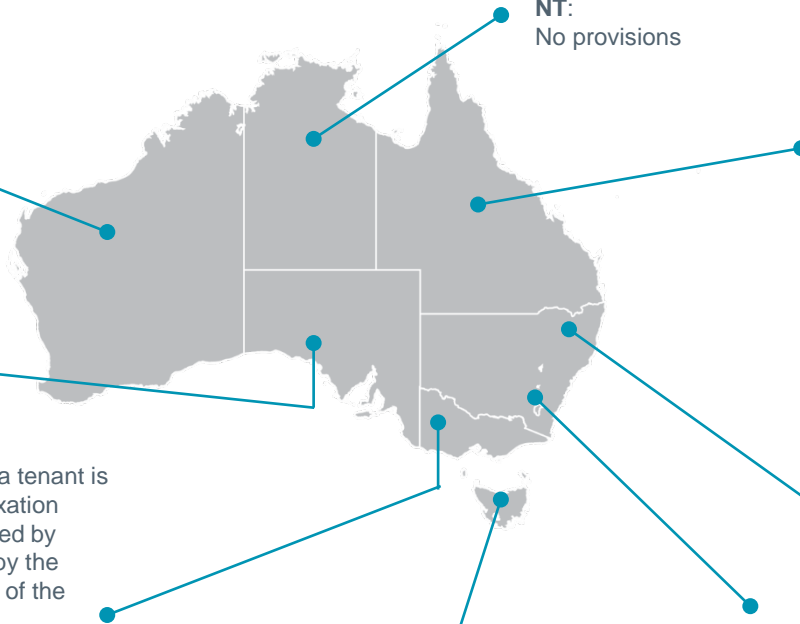
If an Impacted Lessee is a member of a corporate group, turnover for the purposes of Regulations is that of the corporate group. *(Regulation 4 and Regulation 2(b)(ii) of Schedule 1)*

**ACT:**

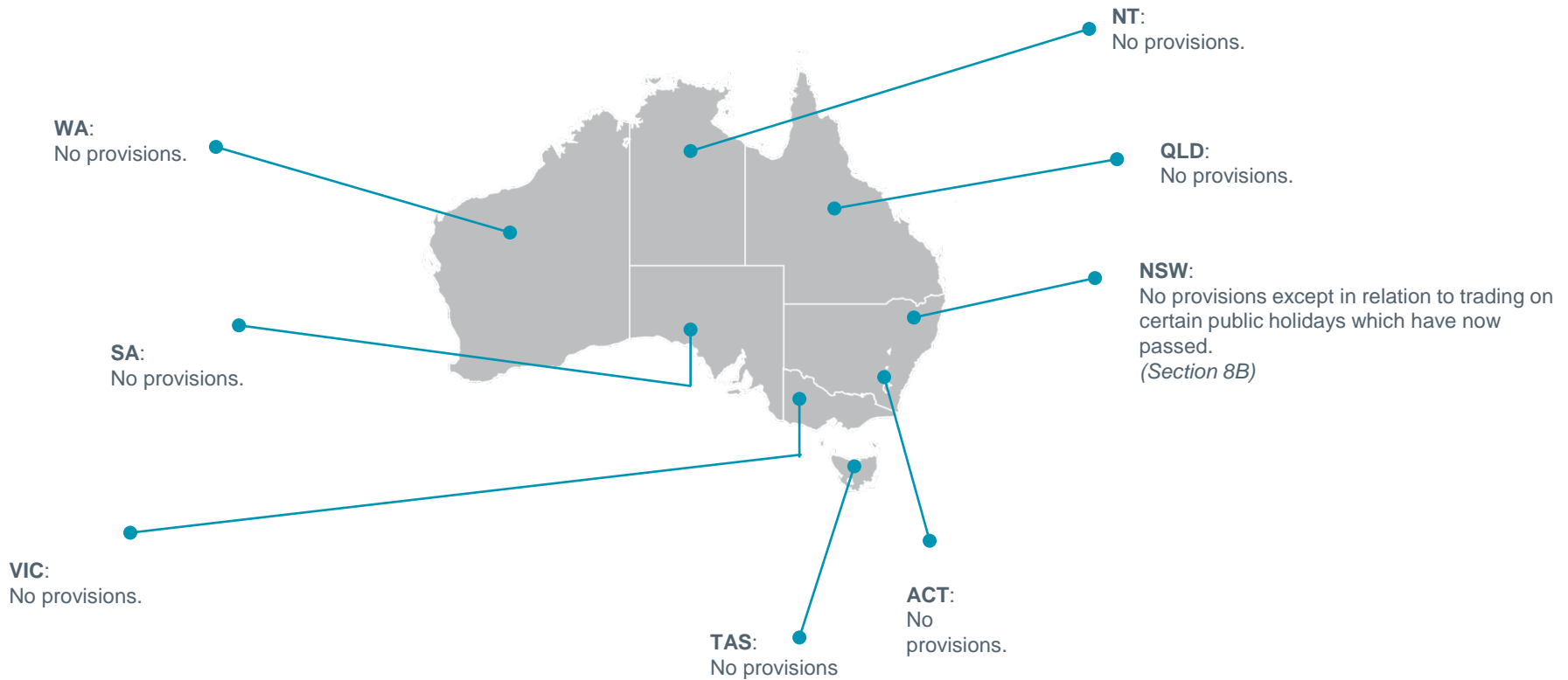
If an Impacted Tenant is a member of a corporate group, turnover for the purposes of the Declaration is that of the corporate group. *(Regulation 3(1) (b)(ii))*

**TAS:**

No provisions



## Do the measures include provisions relating to shopping centres?



Do parties need to act in good faith when negotiating rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>Yes.</p> <p>A landlord and tenant under an Eligible Lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which the Regulations apply.</p> <p><i>(Regulation 2)</i></p>	<p>Yes.</p> <p>The Guidelines restate the principles of the Code, and suggest that these should be applied to negotiations between a landlord and tenant. These include the statement that a landlord and tenant are to act openly and honestly in negotiations and provide sufficient and accurate information to achieve the outcomes consistent with the Code.</p> <p><i>(Regulation 4 and ACT Government Response on Commercial Tenancies Guidance Notes)</i></p>	<p>Yes.</p> <p>Parties must negotiate rent in good faith.</p> <p><i>(Regulation 7(3) and Regulation 5(3) of Schedule 1)</i></p>	<p>Yes.</p> <p>Parties must cooperate and act reasonably and in good faith in all discussions and actions associated with:</p> <ul style="list-style-type: none"> <li>a) mitigating the effect of the COVID-19 emergency on the parties to the lease; and</li> <li>b) other matters to which the Regulations apply.</li> </ul> <p><i>(Regulation 11)</i></p>	<p>Subject to the Regulations (which are yet to be released), yes.</p> <p>A landlord and tenant under a Protected Lease must, where a request is made to renegotiate rent, renegotiate the rent in good faith.</p> <p><i>(Section 18(2))</i></p> <p>A party to a Protected Lease must not make a representation to another party to the Protected Lease that the party knows is misleading or deceptive at the time it is made by the party.</p> <p><i>(Section 12(3))</i></p>	<p>Yes, parties must negotiate rent and other terms in good faith.</p> <p><i>(Regulation 6)</i></p>	<p>Yes.</p> <p>The landlord and tenant have overarching obligations to act reasonably and in good faith.</p>	<p>Whilst there are no provisions to provide a tenant an enforceable entitlement to negotiate for rent relief from the landlord, the landlord may only take enforcement action after having negotiated in good faith with a tenant for 30 days. These requirements will be additional to requirements specified in a lease, but can happen concurrently where that is possible.</p> <p>A person commits an offence if, in the course of the negotiations a person intentionally or recklessly:</p> <ul style="list-style-type: none"> <li>• misrepresents their financial situation; or</li> <li>• discloses information about the other person's financial situation.</li> </ul>

Do parties need to act in good faith when negotiating rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
				<p>Additionally, a party to a Protected Lease must:</p> <ul style="list-style-type: none"> <li>a) at the request of the other party, provide to the other party information that is accurate and that is sufficient to enable negotiations, on the basis of reliable information, to occur for the purposes of reaching agreements as to the payment of rent;</li> <li>b) provide to the other party information that is reasonably necessary:               <ul style="list-style-type: none"> <li>• to allow the other party to conduct negotiations in relation to; or</li> <li>• to obtain information in relation to; or</li> </ul> </li> </ul>			

Do parties need to act in good faith when negotiating rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
				<ul style="list-style-type: none"> <li>• to apply for, or to enable the determination of eligibility for, financial assistance, or any form of financial accommodation, to be obtained from a person or entity;</li> <li>c) not make use of any information provided by the other party to the Protected Lease, other than for the purposes of the Act; and</li> <li>d) Not provide to any other person (except those prescribed under the Act, including a legal advisor), any information provided by the other party in accordance with negotiations as to the payment of rent.</li> </ul> <p><i>(Section 12(1))</i></p>			



What happens if parties cannot agree on rent relief?

VIC	ACT	NSW	QLD	TAS	SA	WA	NT
<p>A landlord or a tenant under an Eligible Lease may refer a dispute under the Regulations to the Small Business Commissioner for mediation. Mediation is not limited to formal mediation procedures.</p> <p><i>(Regulation 20)</i></p> <p>If the Small Business Commissioner provides a certificate stating that mediation has failed, or is unlikely to resolve the dispute, a party may bring a proceeding in VCAT or a court.</p>	<p>The Guidelines indicate that the Local Business Commissioner will be available to mediate between the parties. However, the Local Business Commissioner cannot compel the parties to mediate, nor make a binding decision. The Magistrates' Court will not permit proceedings to commence unless a mediation has first taken place. It is also likely that the ACT Government will provide further clarification on the operation of the mediation process, particularly in light of the current mediation process provisions under the Act.</p> <p><i>(ACT Government Response on Commercial Tenancies Guidance Notes)</i></p>	<p>For retail shop leases the Regulations require the parties to resolve their disputes in accordance with dispute resolution requirements under <i>the Retail Leases Act 1994</i> (NSW). This dispute resolution process requires parties to attempt mediation with the Office of the NSW Small Business Commissioner before applying to the New South Wales Civil and Administrative Tribunal or the Court for an order.</p> <p><i>(Regulation 8)</i></p> <p>For commercial leases, the Regulations require the parties to attempt mediation with the Small Business Commissioner.</p> <p><i>(Regulation 6)</i></p>	<p>The Regulations require parties to the lease to attempt to resolve any dispute prior to any mediation. In attempting to resolve a dispute each party must cooperate and act reasonably and in good faith.</p> <p><i>(Regulation 25)</i></p> <p>If the parties fail to resolve the dispute, the small business commissioner (the Commissioner) can accept a dispute notice. A dispute notice may be dismissed if the Commissioner considers that the dispute notice:</p> <ul style="list-style-type: none"> <li>a) does not relate to an eligible lease dispute;</li> <li>b) is frivolous or vexatious; or</li> <li>c) has not been given in good faith.</li> </ul> <p><i>(Regulation 26)</i></p>	<p>Subject to the Regulations (which are yet to be released), a landlord and tenant under a Protected Lease must attempt to resolve any dispute which arises during the Financial Hardship Period by direct negotiation.</p> <p><i>(Section 22)</i></p> <p>Subject to the Regulations (which are yet to be released), a party under a Protected Lease may apply to a Mediation Provider (being the Director of Consumer Affairs or any delegate) for mediation of a dispute, in relation to issues that arise from, or are related to, the operation of the Act.</p> <p><i>(Section 23)</i></p>	<p>A party to a commercial lease may apply to the Small Business Commissioner for resolution of a "relevant dispute" being a dispute in relation to:</p> <ul style="list-style-type: none"> <li>a) whether or not a tenant is suffering financial hardship as a result of the COVID-19 pandemic;</li> <li>b) the provision of rent relief during the Prescribed Period; or</li> </ul>	<p>Either the landlord or tenant under a small commercial lease may apply to the State Administrative Tribunal (SAT) to resolve a 'dispute' involving the Act, the Code or a 'financial hardship dispute' (essentially where a landlord disputes a tenant's breach has resulted from the pandemic at all).</p> <p>Before proceeding to the SAT parties need to seek mediation via the Small Business Commissioner, although a direct application can be made to the SAT in limited instances.</p>	<p>Unless there are exceptional circumstances, 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, unless the parties agree to the expense of the parties. However this requirement does not apply to an application for a warrant of possession brought in the Supreme Court where it has jurisdiction.</p>

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			<p>The Commissioner must arrange a mediation conference.</p> <p><i>(Regulation 27)</i></p> <p>If the parties are unable to resolve the dispute within 30 days of giving a dispute notice then there is scope to refer the matter to QCAT for a hearing.</p> <p><i>(Regulation 41)</i></p>	<p>Whether or not an application is made to a Mediation Provider, a party may seek to have the dispute arbitrated under the <i>Commercial Arbitration Act 2011</i> (Tas).</p> <p><i>(Section 26)</i></p>	<p>c) a dispute in relation to issues that have occurred in relation to the COVID-19 pandemic. The issue may arise from, or relate to, the operation of the Regulations, a commercial lease or any other matter relevant to the occupation of the premises or to a business conducted at the premises.</p> <p>A tenant may only apply to the Commissioner for mediation if the tenant is, or is claiming to be, an Affected Lessee.</p> <p><i>(Regulations 8(1)-(2) and 3)</i></p>	<p>The SAT has wide powers to make a orders, including for the payment of monies, ordering rent waivers and rent deferrals, and possibly terminating a lease in a “financial hardship dispute”.</p> <p>In cases where the claim relates to a “financial hardship dispute” and the SAT is satisfied that the tenant’s breach is in fact due to COVID-related financial hardship, the SAT may make any order that is to the tenant’s advantage in order to resolve the dispute.</p>	

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					<p>A party may only apply to the Court for resolution of a relevant dispute, if the Commissioner has issued a certificate stating that the mediation has been terminated without resolution, that mediation would not be reasonable in the circumstances or that a party refused to participate or did not participate in good faith.</p> <p>The Court may make a determination as to whether or not a tenant is an Affected Lessee and in making such an order may have regard to:</p> <p>a) whether the tenant is eligible for, or receiving, a JobKeeper payment in respect of the business of the tenant; and</p>		

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					<p>b) any reduction in turnover of the business of the tenant (as verified by financial records or statements provided by the tenant) during a specified period as compared with another specified period determined by the Court.</p> <p>The Court may also make one or more of the following orders:</p> <p>a) an order granting rent relief to an Affected Lessee and at least 50% of the rent relief must be in the form of a waiver;</p>		

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					<ul style="list-style-type: none"> <li>b) an order requiring the payment of some or all of the rent under a commercial lease into the Court until the lease has been performed</li> <li>c) an order requiring that rent paid into the Court be paid out and applied as directed by the Court;</li> <li>d) an order modifying the terms and conditions of a lease;</li> </ul>		

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					<p>e) 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. If the Court makes this order it may also make an order extending the term of the lease for the period for which rent is deferred; and</p> <p>f) any other orders the Court thinks necessary or desirable to resolve a dispute.</p> <p><i>(Regulations 8(4) and 9)</i></p>		

## CONTACTS



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