

Rental relief available for commercial leases during COVID-19: A charity and not-for-profit perspective

Jurisdiction summary

Current as at 31 August 2020

	New South Wales	Victoria	Queensland	Western Australia	Australian Capital Territory	South Australia	Northern Territory	Tasmania
Regulation	<i>Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020 (NSW)</i>	<i>COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (Vic)</i>	<i>Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Qld)</i>	<i>Commercial Tenancies (COVID-19 Response) Regulations 2020 (WA)</i>	<i>The Leases (Commercial and Retail) COVID-19 Emergency Response Commercial Leases Declaration 2020 (ACT)</i>	<i>COVID-19 Emergency Response (Commercial Leases No. 2) Regulations 2020 (SA)</i>	<i>Business Tenancies COVID-19 Modification Notice 2020 (NT)</i>	<i>COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 Notice Under Section 22 (Tas)</i>
Relevant period	24 April 2020 – 24 October 2020	29 March 2020 – 31 December 2020	29 March 2020 – 30 September 2020	30 March 2020 – 29 September 2020, or such other date that may be prescribed.	1 April 2020 – the later of: <ul style="list-style-type: none"> the day that a COVID-19 emergency is no longer in place (being when a state of emergency declared under the <i>Emergencies Act 2004</i> (ACT) or an emergency is declared under the <i>Health</i> 	30 March 2020 – 30 September 2020	18 March 2020 - the day that a COVID-19 emergency declaration is no longer in place.	1 April 2020 – 12 months from the commencement of the <i>COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020</i> (Tas), or such other date that may be declared.

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					<p><i>Act 1997 (ACT)</i>); or</p> <ul style="list-style-type: none"> the day notified by the Minister. 			
<p>Proportionate reductions in rent (Code: Principle 3)</p>	<p>Your organisation may only renegotiate a reduction in rent that is proportionate to the reduction in your organisation's trade during the COVID-19 pandemic period if it is an impacted lessee for the purposes of the Regulation. For example, if your organisation has experienced a 30% reduction in trade, it is entitled to 30% cash flow relief. Reductions in rent are available through rental waivers and rental deferrals.</p> <p>You should be prepared to substantiate your</p>	<p>Your organisation is entitled to negotiate a reduction in rent. However, this is not necessarily proportionate to the reduction in your organisation's trade.</p> <p>The reduction should take into account:</p> <ul style="list-style-type: none"> the reduction in your organisation's turnover associated with the premises during the relevant period; any waiver of outgoings by the landlord; whether a failure to offer sufficient 	<p>Your organisation is entitled to negotiate a reduction in rent that is proportionate to the reduction in your organisation's trade during the COVID-19 pandemic period. For example, if your organisation has experienced a 30% reduction in trade, it is entitled to 30% cash flow relief. Reductions in rent are available through rental waivers and rental deferrals.</p> <p>You should be prepared to substantiate your organisation's reduction in trade with appropriate</p>	<p>Your organisation is entitled to negotiate a reduction in rent that is proportionate to the reduction in your organisation's trade during the COVID-19 pandemic period. For example, if your organisation has experienced a 30% reduction in trade, it is entitled to 30% cash flow relief. Reductions in rent are available through rental waivers and rental deferrals.</p> <p>You should be prepared to substantiate your organisation's reduction in trade with appropriate</p>	<p>Your organisation is entitled to negotiate a reduction in rent that is proportionate to the reduction in your organisation's trade during the COVID-19 pandemic period. For example, if your organisation has experienced a 30% reduction in trade, it is entitled to 30% cash flow relief. Reductions in rent are available through rental waivers and rental deferrals.</p> <p>You should be prepared to substantiate your organisation's reduction in trade with appropriate</p>	<p>Landlords are not required to provide any reduction in rent. Accordingly, any reduction in rent will be subject to negotiation between the parties, having regard to the leasing principles of the Code.</p>	<p>Landlords are not required to provide any reduction in rent. Accordingly, any reduction in rent will be subject to negotiation between the parties.</p>	<p>Your organisation is entitled to negotiate a reduction in rent proportionate to the reduction in your organisation's trade during the COVID-19 pandemic period. For example, if your organisation has experienced a 30% reduction in trade in any continuous one month period since 1 February 2020, it is entitled to 30% cashflow relief (provided the turnover from 1 February 2019 – 31 January 2020 is not more than \$50 million). Reductions in rent are available through rental waivers and rental</p>

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	<p>organisation's reduction in trade with appropriate financial data and business records.</p>	<p>rent relief will compromise your organisation's capacity to fulfil your organisation's ongoing obligations under the lease, including the payment of rent;</p> <ul style="list-style-type: none"> the landlord's financial ability to offer rent relief, including any relief provided to the landlord by any of its lenders as a response to the COVID-19 pandemic; and any reduction in outgoings in relation to the premises. <p>Taking into account the landlord's financial ability to provide the rent relief is a</p>	<p>financial data and business records.</p>	<p>financial data and business records.</p>	<p>financial data and business records.</p>			<p>deferrals. You should be prepared to substantiate your organisation's reduction in trade with appropriate financial data and business records.</p>

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		<p>point of difference to the Code.</p> <p>You will be required to substantiate your organisation's position as an impacted lessee.</p>						
Rental waivers (Code: Principle 4)	<p>Your organisation is entitled to negotiate at least half of its rent reductions through rental waivers. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver.</p>	<p>Your organisation is entitled to negotiate rent relief with no less than 50% of the relief provided in the form of a waiver of rent. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver.</p>	<p>Your organisation is entitled to negotiate at least half of its rent reductions through rental waivers. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver.</p>	<p>Your organisation is entitled to negotiate at least half of its rent reductions through rental waivers. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver.</p>	<p>Your organisation is entitled to negotiate at least half of its rent reductions through rental waivers. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver.</p>	<p>There is no obligation on the landlord to decrease rent by way of a waiver based on your organisation's reduction in turnover caused by COVID-19.</p>	<p>There is no obligation on the landlord to decrease rent by way of a waiver based on your organisation's reduction in turnover caused by COVID-19.</p>	<p>Your organisation is entitled to negotiate rent relief with no less than 50% in the form of a waiver of rent. A rental waiver means that your organisation will never need to pay the amount waived. For example, if your organisation has experienced a 30% reduction in trade, a minimum of 15% of your rental relief must be provided through a rental waiver. However, any waiver will be required to take the financial position of your organisation's</p>

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								landlord into account.
Rental deferrals (Code: Principle 5)	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals. A rental deferral means that your organisation will eventually need to pay back the amount deferred. For example, if your organisation has experienced a 30% reduction in trade, a maximum of 15% of your rental relief can be provided through a rental deferral.	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals. The deferred rent does not start to become payable until the date of expiration of the Regulation or the expiry of the term of the eligible lease which includes any extension granted under the Regulation (whichever comes first).	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals to be paid back using a method agreed by the parties over a period of at least two years but no more than three years. The deferred rent does not start to become payable until the day after the expiration of the Regulation (which is 1 October 2020, unless further extended).	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals, amortised over the balance of the term of the lease or 24 months (whichever is longer). A rental deferral means that your organisation will eventually need to pay back the amount deferred. For example, if your organisation has experienced a 30% reduction in trade, a maximum of 15% of your rental relief can be provided through a rental deferral.	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals. A rental deferral means that your organisation will eventually need to pay back the amount deferred. For example, if your organisation has experienced a 30% reduction in trade, a maximum of 15% of your rental relief can be provided through a rental deferral.	There is no obligation on the landlord to defer rent based on your organisation's reduction in turnover caused by COVID-19.	There is no obligation on the landlord to defer rent based on your organisation's reduction in turnover caused by COVID-19.	Your organisation is entitled to have the rest of its rent reductions provided through rental deferrals which is amortised over two years or the remaining lease term, whichever is greater. A rental deferral means that your organisation will eventually need to pay back the amount deferred. For example, if your organisation has experienced a 30% reduction in trade, a maximum of 15% of your rental relief can be provided through a rental deferral.
Landlords sharing benefits	Where your organisation's landlord receives a benefit from a deferral of loan	Where your organisation's landlord receives a benefit from a deferral of loan	The passing on of any reduction in statutory charges and any deferral of loan payments will	There is no obligation on the landlord to pass on benefits. Any passing on of any	Where your organisation's landlord receives a benefit from a deferral of loan	The passing on of any reduction in statutory charges and any deferral of loan payments will	The passing on of any reduction in statutory charges and any deferral of loan payments will	Where your organisation's landlord receives a benefit from a deferral of loan

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(Code: Principle 7)	repayments (whether provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other deferral of loan repayments), the benefit should be shared with your organisation in a proportionate manner.	repayments (whether provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other deferral of loan repayments), the benefit should be shared with your organisation in a proportionate manner or the landlord must reimburse the excess amount to your organisation as soon as possible.	be subject to negotiation between the parties. However, where your organisation's landlord received land tax relief, this must be passed on to your organisation in the form of rent relief.	reduction in statutory charges will be subject to negotiation between the parties, having regard to the leasing principles of the Code.	repayments (whether provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other deferral of loan repayments), the benefit should be shared with your organisation in a proportionate manner.	be subject to negotiation between the parties, having regard to the leasing principles of the Code.	be subject to negotiation between the parties, having regard to the leasing principles of the Code.	repayments (whether provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other deferral of loan repayments), the benefit should be shared with your organisation in a proportionate manner.
Waiving other expenses (Code: Principle 8)	Your organisation's landlord should seek to waive any other expenses or outgoings payable by your organisation under lease terms while your organisation is not able to trade. For example, this may include utilities, council	Your organisation's landlord should seek to waive any other expense or outgoings payable by your organisation under lease terms while your organisation is not able to trade. For example, this may include utilities, council	There is no obligation on landlords to waive the recovery of outgoings or other expenses under the lease during the period that your organisation is unable to trade from the premises. A waiver of outgoings or other	There is no obligation on landlords to waive the recovery of outgoings or other expenses under the lease during the period that your organisation is unable to trade from the premises. A waiver of outgoings or other	Your organisation's landlord should seek to waive any other expenses or outgoings payable by your organisation under lease terms while your organisation is not able to trade. For example, this may include utilities, council	There is no obligation on landlords to waive the recovery of outgoings or other expenses under the lease during the period that your organisation is unable to trade from the premises. A waiver of outgoings or other	There is no obligation on landlords to waive the recovery of outgoings or other expenses under the lease during the period that your organisation is unable to trade from the premises. A waiver of outgoings or other	Your organisation's landlord should seek to waive any other expense or outgoings payable by your organisation under lease terms while your organisation is not able to trade. For example, this may include utilities, council

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	and water rates, body corporate fees and insurance. However, it is important to note that the landlord reserves the right to reduce such services as required.	and water rates, body corporate fees and insurance. However, it is important to note that the landlord reserves the right to reduce such services as required. Where outgoings are charged by the landlord, the amount to be paid is not allowed to be greater than your organisation's proportional share of the reduced outgoing. If your organisation has already paid outgoings, and the amount was greater than the proportional share of the reduced outgoing, your organisation must reimburse the excess amount as soon as possible.	charges during a period where your organisation is unable to trade will be subject to negotiation between the parties to the extent that it is reasonable in the circumstances and subject to any reasonable request by your organisation.	charges during a period where your organisation is unable to trade will be subject to negotiation between the parties.	and water rates, body corporate fees and insurance. However, it is important to note that the landlord reserves the right to reduce such services as required.	charges during a period where your organisation is unable to trade will be subject to negotiation between the parties.	charges during a period where your organisation is unable to trade will be subject to negotiation between the parties.	and water rates, body corporate fees and insurance. However, it is important to note that the landlord reserves the right to reduce such services as required.

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Repayment (Code: Principle 9)	If any negotiated arrangements require repayment by your organisation, repayment should occur over an extended period of time so that your organisation is not faced with undue financial burden. Repayment should not commence until either the COVID-19 pandemic ends or the existing lease expires (whichever comes first).	If any negotiated arrangements require repayment by your organisation, the landlord must not request payment of any part of the deferred rent until the date of expiration of the Regulation or the expiry of the term of the eligible lease which includes any extension granted under the Regulation (whichever comes first).	-	If any negotiated arrangements require repayment by your organisation, repayment should occur over an extended period of time so that your organisation is not faced with undue financial burden. Repayment should not commence until either the COVID-19 pandemic ends or the existing lease expires (whichever comes first).	If any negotiated arrangements require repayment by your organisation, repayment should occur over an extended period of time so that your organisation is not faced with undue financial burden. Repayment should not commence until either the COVID-19 pandemic ends or the existing lease expires (whichever comes first).	-	-	If any negotiated arrangements require repayment by your organisation, repayment should occur over an extended period of time so that your organisation is not faced with undue financial burden. Repayment should not commence until either the COVID-19 pandemic ends or the existing lease expires (whichever comes first).
Fees, interest and other charges (Code: Principle 10)	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred.	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred.	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred unless your organisation has failed to comply with the conditions on which the rent was deferred.	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred.	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred.	-	-	Your organisation's landlord should not charge fees, interest or other charges in relation to any rent waived or deferred.

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Lease term extension (Code: Principle 12)	Your organisation should be provided with an opportunity to extend its lease for an equivalent period of the rental waiver or rental deferral period, so it has additional time to trade on existing lease terms.	Your organisation should be provided with an opportunity to extend its lease for an equivalent period of the rental waiver or rental deferral period, so it has additional time to trade on existing lease terms. The landlord must offer to extend the term of the lease on the same terms and conditions as applied before the commencement of the Regulations.	Your organisation should be provided with an opportunity to extend its lease for an equivalent period of the rental waiver or rental deferral period, so it has additional time to trade on existing lease terms. The landlord must offer to extend the term of the lease on the same terms and conditions as applied before the commencement of the Regulations, except that the rent payable during the extension must be adjusted for the waiver or deferral.	Your organisation should be provided with an opportunity to extend its lease for an equivalent period of the rental waiver or rental deferral period, so it has additional time to trade on existing lease terms. However, where an extension is inconsistent with the terms of the lease or with another contract or agreement the landlord has with a third party, the landlord does not need to offer an extension.	Your organisation should be provided with an opportunity to extend its lease for an equivalent period of the rental waiver or rental deferral period, so it has additional time to trade on existing lease terms.	There is no obligation on the landlord to extend the term of the lease based on your organisation's reduction in turnover caused by COVID-19.	There is no obligation on the landlord to extend the term of the lease based on your organisation's reduction in turnover caused by COVID-19.	Your organisation must have its lease extended if requested, so it has additional time to trade on existing lease terms.
Rent increase (Code: Principle 13)	Your organisation's landlord cannot increase the rent during the emergency period or retrospectively for that period.	Unless otherwise agreed, your organisation's landlord cannot increase the rent during the term of the Regulation.	Your organisation's landlord cannot increase the rent during the term of the Regulation.	Your organisation's landlord cannot increase the rent during the term of the Regulation. Any rent reviews undertaken between 30 March 2020 and 23 April	-	Unless otherwise agreed, your organisation's landlord cannot increase the rent during the term of the Regulation.	-	Unless otherwise agreed, your organisation's landlord cannot increase the rent during the term of the Regulation.

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				2020 that resulted in an increase in rent are valid, but the increase is not effective until the end of the COVID-19 emergency period.				