



## National Mandatory Code of Conduct

as at 14 April 2020

On 3 April 2020, that the National Cabinet issued a draft National Mandatory Code of Conduct (**Code**) that is intended to apply to retail, office and industrial leases held by small to medium enterprises during COVID-19. On 7 April 2020 draft Code was endorsed by National Cabinet and is to be implemented (and enforced) by legislation in each of the States and Territories of Australia with effect from 3 April 2020.

The Code defines principles that will govern commercial tenancies and complement the Federal Government's hibernation plan, by encouraging landlords, tenants and financial institutions to work together to negotiate concessions and ensure that businesses can survive this period. However, parties who are not significantly affected by COVID-19 are expected to honour their leases.

The Code will apply where a tenant has a turnover of \$50 million or less and is suffering financial stress or hardship as a result of the Covid-19 pandemic. Tenants which are eligible for the JobKeeper program (ie. the business' turnover must have decreased at least 30 per cent) are automatically considered to be in financial distress. The Code will be applied in respect of franchises at the franchisee level and in respect of corporate groups at the group level (rather than the individual retail outlet level for example). Under the Code there are a number of Overarching Principles and fourteen (14) Leasing Principles, applied on case by case basis, during the pandemic period:

- The landlord and tenant must act in good faith.
- A landlord may not terminate a lease or draw on the tenant's security for non-payment of rent.
- Landlords will be required to offer rent reductions "proportionate" to the trading reduction in the tenant's trade through a combination of waivers and deferral of rent.
- Waivers of rent must account for at least 50% of the reduction in rent provided to the tenant, without interest, fee or penalty being applied.
- Deferrals must be re-paid over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, again without interest, fee or penalty being applied.
- Any reduction in statutory charges (e.g. land tax, council rates) or insurance must be passed on to the tenant in a proportionate manner and landlords should share any benefits they receive due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response.
- Landlords should seek to waive recovery of any other expense (or outgoing payable) but in doing so can reduce services as required.
- Tenants should be provided with an opportunity to extend their lease for an equivalent period of the rent waiver and/or deferral period so as to provide the tenant additional time to trade, on existing lease terms, during the recovery period post COVID-19.
- Rent increases (except for retail leases based on turnover rent) will be frozen.
- Landlords must not impose any prohibition or levy if tenants reduce opening hours or cease to trade.

A copy of the Code may be accessed here: <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

The Code will be supported by a binding mediation process.

Disclaimer: This fact sheet is based on advice provided to the Synod office by Denton's lawyers. For further information, please contact a member of the Synod office legal team via email.