



LAW IN THE TIME
OF COVID-19

The National Cabinet has introduced the *Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID -19 (the Code of Conduct)*. The Code of Conduct provides certain eligible parties a mandatory framework to assist them in resolving alternative arrangements during the pandemic. The Code of Conduct does not apply automatically.

If the Code of Conduct applies, it does not immediately suspend Leases or rent payments, and does not give Tenants a right to terminate for convenience.

If the Code of Conduct does not apply, or if the parties do not agree on and document alternative arrangements, the terms of the Lease continue to apply. If Landowners and Tenants require assistance in negotiations, they should seek it as early as possible. Any alternative arrangements agreed must be documented in writing.

▶ IF YOU LIKE THIS,
WE LIKE YOU.

We believe in sharing knowledge, experience and ambitions so that together we can build something bigger than ourselves and better than what came before.

Sound good? Let's chat.

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Not all Leases are created equal. The Code of Conduct has been implemented to assist Landowners and their affected Tenants navigate the process of negotiating alternative rent arrangements.

However, the Code of Conduct does not suspend all terms of the Lease, grant automatic rent relief or solve all issues. The terms of the Lease remain paramount in the relationship between the Landowner and the Tenant.

Knowing Your Lease Is The First Step

Ask and answer these questions about your Lease to establish a good base for any negotiations.

1. Does the Code of Conduct apply to the parties?
2. Is the Lease governed by the *Leases (Commercial and Retail) Act 2001 (ACT)* or *Retail Leases Act 1994 (NSW)*?
3. Does the Tenant have an obligation to remain open, stocked and operating the business from the Premises during certain hours?
4. Conversely, does the Tenant have a right or an obligation to cease operating and under what circumstances?
5. What is the permitted use of the Premises and is that permitted use subject to a shutdown?
6. Who bears the risk for legislative changes which prohibit, diminish or change the Tenant's permitted use of the Premises?
7. Is the Tenant required to notify the Landowner of any pathogens (including infectious diseases) or contaminants discovered on or affecting the Premises?
8. What are the consequences, including closure of the Tenant's business, of finding and reporting those pathogens or contaminants?
9. What are the Landowner's obligations to clean the Building that the Premises are located within?
10. What are the Tenant's obligations to clean the Premises?

11. What are the Tenant's obligations to reduce risk to persons and property in and around the Premises, including preventing exposure to or spread of pathogens and contamination?
12. Does the Landowner have the right to enter the Premises to clean it or take other actions to limit covid-19 risk, if the Tenant fails to do so adequately?
13. Does the Landowner have the right to enter the Premises to rectify any Tenant non-compliances with special distancing requirements?
14. Can the Landowner recover the costs it incurs in any enforcement action it takes in Questions 12 or 13?
15. Does the Landowner have the right to control, amend, close, restrict access to the Building, Common Areas etc and in what circumstances?
16. Can the Landowner require the Tenant to cease trading for any reason?
17. Is the Landowner liable for compensation to the Tenant for the actions taken in Questions 15 or 16?
18. Does the Lease otherwise provide for Tenant's rent relief or rent abatement, and under what circumstances?
19. Is there a force majeure clause which captures covid-19, and what is its effect?

Where To Next?

During the covid-19 pandemic, the terms of every Lease continue to apply. If the Code of Conduct applies, the Tenant is afforded some protections. If the parties have signed a formal written agreement as to alternative arrangements for rent, this has the effect of amending the Lease terms for the duration of that arrangement.

Even if a formal written agreement regarding rent has been signed, all the other terms of the Lease continue to apply.