



LAW IN THE TIME OF COVID-19

The Code of Conduct took effect as of 3 April 2020 and is intended to be in effect for the duration of the JobKeeper program for Tenants suffering hardship due to the pandemic. It is mandatory where the Tenant:

- has a turnover of less than \$50 million; and
- is eligible for the JobKeeper program.

The Code of Conduct:

- applies negotiations over existing leasing arrangements
- contemplates negotiations for Lease renewals and extensions
- calls for Landowners to share concessions and relief they may receive with Tenants
- suggests that alternative arrangements must not place the Tenant in hardship

The Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19 (the Code of Conduct) has been conceived and published by the National Cabinet.

Its intent is to promote business continuity during the pandemic by providing a framework to agree temporary arrangements to alleviate and delay rent obligations under certain circumstances.

The Code of Conduct does not immediately forgive rent or suspend Lease obligations. It directs Landowners and Tenants to work together in good faith to come to arrangements which share the financial risk and cash flow impact of the pandemic proportionately.

The parties must act within the spirit of the *Competition and Consumer Act 2010* (Cth) and otherwise within the constraints of the law and the terms of the Lease.

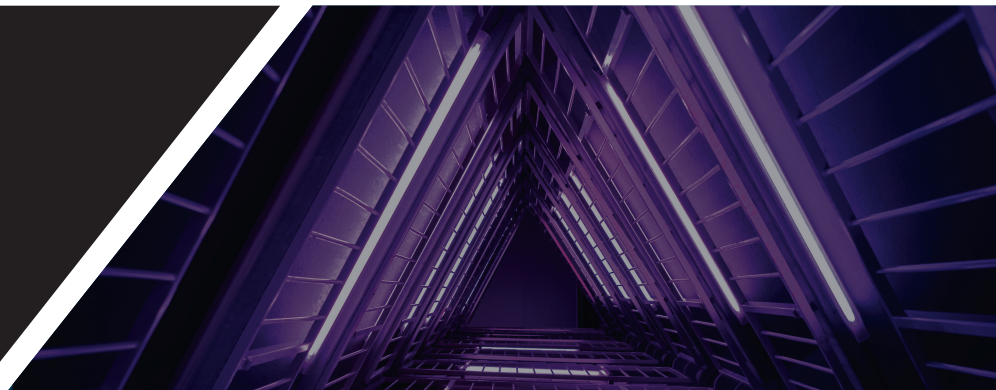
What Does the Code of Conduct Require of Landowners?

- Landowners must not terminate a Lease due to non-payment of rent
- Landowners must offer Tenants reductions in rent as waivers and deferrals proportionate to the Tenant's change in revenue, up to 100% of the amount ordinarily payable
- Rental waivers must constitute at least 50% of the total rent reduction
- Rental waivers:
 - should constitute a greater proportion of the rent reduction if the Tenant will be compromised in complying with the Lease otherwise
 - must have regard to the Landowner's financial capacity to accommodate the waiver
- Any rent not waived is deferred only, and must be paid later
- Landowners should not apply fees, interest or charges to rent waived or deferred
- Landowners pass on proportionately any reductions in statutory outgoings
- Landowners should freeze rent increases for the period of the pandemic and a reasonable recovery period, unless rent is based on turnover for a retail Premises
- Landowners must not draw on a Tenant's security for non-payment of rent during the pandemic period, and any recovery period afterwards
- Landowners should seek to share any benefit received due to deferral of loan repayments provided by their lender
- Landowners should seek to waive recovery of any other outgoings during any period the Tenant is unable to trade, but Landowners may reduce services as required

What Does the Code of Conduct Require of Tenants?

- Tenants must remain committed to the terms of their Lease, or risk losing the protection of the Code;
- Tenants will repay any deferred rent within the longer of two years or the remainder of the Lease term
- Tenants are permitted to reduce opening hours or cease trade without further consequences
- Tenants should be provided with an opportunity to extend the Lease for an equivalent period of any rent waiver and/or deferral period

Continued ►



LAW IN THE TIME OF COVID-19

The Code of Conduct does not apply automatically. If the Code of Conduct applies, it does not automatically:

- suspend Leases;
- give Tenants a right to terminate for convenience; or
- grant Tenants a right to rent relief.

The Code of Conduct provides certain eligible parties a mandatory framework to assist them in resolving alternative arrangements during the pandemic.

Relief and recovery strategies under the Code of Conduct require Landowners and Tenants to work together in good faith, to communicate and share information, and work towards agreeing what they will do to assist each other.

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 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.

MORRISLEGALGROUP.COM.AU
HELLO@MORRISLEGALGROUP.COM.AU
1300 047 227

Continued ►

How Do We Negotiate Alternative Arrangements?

The parties should negotiate in good faith to agree and document their alternative arrangements.

The parties must be honest and transparent in their negotiations. It is expected that and share information from their accounting system and bank with each other, in order to provide sufficient and accurate information to progress discussions.

The parties must assist each other to deal with their respective stakeholders in order to achieve mutually beneficial outcomes.

If a Tenant must repay deferred moneys to the Landowner over an extended period, this should not place an undue financial burden on the Tenant. Repayment of any deferred amounts should commence after the pandemic ends or lease expiry, taking into account a reasonable subsequent recovery period.

What Happens If Alternative Arrangements Cannot Be Agreed?

If the Parties cannot agree on suitable alternative arrangements, they may refer the matter to the relevant leasing dispute resolution procedures in their State or Territory, or mediation. Some States and Territories are establishing dedicated bodies to undertake such mediation.

No party may use mediation to prolong the resolution of these alternative arrangements.

Who Is Implementing The Code?

Each State and Territory will be responsible for ensuring compliance with the Code of Conduct within their own jurisdiction, and are expected to take steps to implement these principles within each jurisdiction.

Where To Next?

While the Code of Conduct is desirable in all dealings, it is mandatory only for eligible parties. Where the Code of Conduct applies, the Tenant is afforded some immediate protections (outlined above) with an opportunity to negotiate rent relief. Parties to commercial leases should be aware that rent relief must:

- align with the principles of the Code of Conduct;
- be agreed between the parties;
- be documented in writing.

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 (other than any mandatory Tenant protections under the Code of Conduct).

If you need assistance understanding your Lease, the Code of Conduct, negotiating pandemic rent relief or documenting your agreed alternative arrangements, seek it as early as possible. We're at your service.