

COVID-19 Disease Emergency (Commercial Leases) Bill 2020

Code of Conduct for Commercial Leases

The COVID-19 Disease Emergency (Commercial Leases) Bill 2020 (the Bill) will give effect to the Code of Conduct for commercial tenancies (the Code) agreed by National Cabinet on **7 April 2020**.

Financial hardship period (section 4 and 31 relate)

The Code is in effect from **1 April 2020** until the financial hardship cessation day.

The financial hardship cessation day is 12 months from the date the Act commences or sooner if determined by the Treasurer that the Code no longer needs to be in effect. This period is known as the **financial hardship period**.

The Government's intent is that the financial hardship period be in line with the National Code, which is currently in effect while the Commonwealth JobKeeper program remains operational.

This period can be revisited if the National Cabinet extends the Code or if there is a Tasmanian-specific reason to do so.

Protected lease (section 5 relates)

A protected lease:

- is a lease to which the provisions of the Code apply
- is a commercial lease where the lessee is an eligible person (see below).

A lease is a protected lease from the time the lessee becomes an eligible person until the end of the financial hardship period.

Eligible person (section 6 relates)

A lessee is an eligible person when they are eligible for the JobKeeper program and have turnover of less than \$50 million per annum.

Obligations of parties to a protected lease (section 12 and 16 relate)

Each party to a protected lease has an obligation to:

- engage in negotiations with the other party regarding rent payable
- not engage in misleading or deceptive conduct
- provide accurate and sufficient information to enable negotiations, and
- not use or share any information provided by the other party except where expressly allowed or beyond the purpose it is provided.

Prohibited lessor actions for certain breaches of a protected lease (section 7, 10, 12 and 14 relate)

A lessor that is party to a protected lease is prohibited from taking certain actions during the financial hardship period for breach of lease, where the breach relates to failure to:

- pay rent, fees or charges
- meet sales or turnover based performance criteria
- pay outgoings
- be open during the days or hours specified in the lease, or
- as prescribed in regulations.

The prohibited actions include:

- eviction
- exercising a right of re-entry
- distraining goods
- seeking forfeiture
- requiring interest or any other fee or charge on unpaid rent
- recovering the whole or in part a security bond in relation to the lessee, or
- termination.

The lessor must also not impose penalties on the lessee for failing to operate normal trading hours during the financial hardship period.

A lessor is able to take prohibited lessor actions for any other breaches of a protected lease if provided for by the lease.

General protection for actions taken relating to COVID-19 (section 11 relates)

There is a general protection for lessees and lessors for taking actions required, or reasonably considered to be required under laws of the State or Commonwealth in response to COVID-19.

Extension of a protected lease (section 15 relates)

A lessor must, if requested by the lessee, extend the period of the protected lease on similar terms until the end of the financial hardship period.

This section does not apply if the lessor:

- has entered into, or agreed to enter into, another lease in relation to the premises
- intends to occupy the premises for business purposes, or
- as prescribed by regulations.

No increase in rent where lease is a protected lease (section 17 relates)

A lessor must not, unless agreed by the lessee, increase rent for a protected lease during the financial hardship period.

Reduction in rent where lease is a protected lease (section 18 relates)

The lessor must provide the lessee of a protected lease a reduction in rent in line with the provisions provided in the Code.

The Code provides for a rent reduction that is in proportion to the reduction in turnover of the lessee. The reduction in rent is to be in the form of waivers or deferrals, with at least 50 per cent to be in the form of a waiver. A lessor is required to provide a lessee until the end of the lease or 24 months, to repay, in instalments, any deferred rent.

The financial circumstances of the lessee and lessor are to be taken into consideration in the application of this section.

This section will be supported by regulations.

Mediation and dispute resolution (sections 20-27 relate)

Parties are required to attempt to resolve any dispute by negotiation. If this is unsuccessful, either party is able to apply to the mediation provider for mediation of disputes.

The mediation provider is able to mediate a dispute and require information of the parties.

A party to a protected lease may apply to have a dispute arbitrated under the *Commercial Arbitration Act 2011*.

Commercial Code Administration Committee (sections 28-30 relate)

The Bill establishes a Commercial Code Administration Committee to monitor and advise on the implementation of the Code.

The Commercial Code Administration Committee includes membership representing the interests of lessors, lessees and small business.

Regulations

Regulations may be made for the purposes of this Bill, including for the circumstances for which a lease is or is not a protected lease, to modify certain provisions of the Act or to adopt a code or standard.

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