

# Victoria's commercial tenancies relief scheme:

## Policy guidance on eligible participants and documentation requirements

On 7 April 2020 the National Cabinet announced a *Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19* (the Code). In Victoria, these leasing principles have been given effect through the *COVID-19 Omnibus (Emergency Measures) Act 2020* and the *COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020* (the regulations), as the Commercial Tenancy Relief Scheme (CTRS).

### Purpose of this policy guidance

The aim of this policy guidance is to assist tenants and landlords to understand the Victorian Government's intention in implementing the Code through the CTRS. The particular focus is on eligibility and the documentation a landlord can reasonably request and a tenant should reasonably be expected to provide to assist both parties to quickly reach an agreement on rent relief.

The policy intent is in keeping with the spirit of the Code – that both parties negotiate in good faith to reach an agreement, and this should occur in a timely manner. The Victorian Government considers excessive requests for documentation to verify financial positions are not in keeping with the spirit of the Code. Requests for information should be kept to a minimum to avoid imposing additional burden on tenants that might already be in financial distress.

In addition, the Code does not draw a distinction between businesses that have had to cease operating or change their operations directly as a result of a directive from the Chief Health Officer, or those which might have done so on a voluntary basis due to impacts of the coronavirus (COVID-19) pandemic. In keeping with the spirit of the Code, landlords should not base offers for rent relief on whether the business made the voluntary decision to reduce operating hours or close as a result of coronavirus (COVID-19) restrictions. Offers should be based on the financial information provided by the tenant.

## Non-employing sole traders are eligible businesses under the Commercial Tenancies Relief Scheme (CTRS)

A tenant must be a participant in the Commonwealth's JobKeeper payment scheme for its lease to be eligible for rent relief. The registration number provided by the Australian Tax Office is considered enough to demonstrate the tenant is participating in the scheme.

The CTRS applies to all tenants with a turnover of up to \$50 million that participate in the JobKeeper payment scheme, including sole traders, unless they have a relationship, connection or are part of a group described in Regulation 7 with a turnover of more than \$50 million.

## Franchisees

In keeping with the spirit of the Code, it is the Victorian Government's intent that the CTRS applies to franchises at the franchisee level with a turnover up to \$50 million and are participating in the JobKeeper payment scheme.

## Documentation to demonstrate financial circumstances should not be onerous

A commercial tenant may provide one of the following documents for the purpose of demonstrating the reduction in their financial circumstances and their capacity to meet payments for a nominated period:

- information extracted from an accounting system, such as the current cashflow statement
- information extracted from a Business Activity Statement (BAS)
- information provided to a financial institution.

The tenant can choose to provide further documentation if they feel this would assist their request for rent relief.

It is not considered necessary for landlords to request the following documents from tenants to demonstrate a reduction in turnover:

- financial information for periods other than the 'relevant period' being the period nominated by the tenant as the period for a reduction in turnover
- future cash flow projections
- balance sheets, profit and loss, year to date financials
- bank balance details
- requiring the financial information to be verified, examined, assured or audited by a third party such as an accountant
- requiring the financial information be provided by an accountant.

The purpose of the Code and the CTRS is to alleviate financial burden on tenants and landlords already in financial distress.

While it is acknowledged that business advisers and representatives make important contributions to lease negotiations, it is not the intent of the Victorian Government that tenants be required to engage third parties to provide or verify information. If a party chooses to engage third parties or agents, the cost of doing so should be borne by that party.

Under the regulations, penalty interest, fees or charges cannot be imposed in the event of default by the tenant on a rent relief agreement.

## Proportionate reduction in rent

There is an expectation that rent relief should be provided in proportion to the decline in the tenant's turnover. When determining the amount of rent relief to be provided, all of the circumstances of the lease should be considered, including the landlord's and tenant's individual financial circumstances.

If a landlord offers rent relief that is not in proportion to the tenant's decline in financial circumstances, the landlord should provide documentation of their financial position to the tenant to justify the amount of rent relief offered.

## Payments received under JobKeeper payment scheme

Payments that a tenant receives from their participation in the JobKeeper scheme should not be included in turnover calculations to determine the proportion of rent relief, as these payments must be fully paid to the employee by the business.

## Change in the tenant's or landlord's circumstances during the relief agreement

If a tenant's financial circumstances deteriorate after an agreement has been made, Regulation 11 allows for the tenant to make a further request to a landlord for additional rent relief.

If a tenant's business improves during the coronavirus (COVID-19) pandemic, it is not the Government's intent that a new negotiation is required.

## If a tenant and landlord cannot agree on these matters

Commercial tenants or landlords that consider the other party is not negotiating in good faith or have requested excessive documentation can contact the Victorian Small Business Commission. Email [enquiries@vsbc.vic.gov.au](mailto:enquiries@vsbc.vic.gov.au) or call **13 87 22** for assistance and to lodge an application for mediation.