



## Commercial Tenancies

### SUMMARY

National Cabinet have agreed that short-term intervention is needed for commercial tenancies under financial stress due to COVID-19. They have also agreed to a moratorium on evictions for commercial tenants in this position for the next six months.

The Prime Minister yesterday announced a Cabinet agreement on mandatory SME commercial leasing principles which will apply during COVID-19. These principles are interlinked with the Commonwealth Government's JobKeeper scheme.

### Fundamental Advice

#### The most fundamental advice is that:

- National Cabinet have agreed that short-term intervention is needed for commercial tenancies and work on this has commenced.
- National Cabinet have agreed to a moratorium on evictions over the next six months for commercial tenancies who are unable to meet their commitments due to the impact of COVID-19.
- National Cabinet have released a **mandatory [code of conduct](#)** for commercial tenancy relief, which applies to SME businesses.
- An SME is considered to be a business with an annual turnover of up to \$50 million and is an eligible business for the purpose of the Commonwealth Government's JobKeeper scheme. The \$50 million annual turnover threshold will be applied in respect of franchises at the franchisee level, and in respect of retail corporate groups at the group level (rather than at the individual retail outlet level).
- The COVID-19 pandemic period, to which the code refers, is defined by the period during which the JobKeeper scheme is operational.
- Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Champions/Ombudsmen where applicable.

#### The Mandatory Code of Conduct

- The Code will be given effect through relevant state and territory legislation or regulation as appropriate. It is intended to complement the legislation during the crisis period, rather than supersede it.
- Its purpose is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, in circumstances where the tenant is a small-medium sized business that meets the specified SME criteria.
- National Cabinet have agreed to having a proportionality to rent reductions based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants.

- The Code still allows tenants and landlords to agree to tailored, bespoke and appropriate temporary arrangements that take account of their particular circumstances.
- National Cabinet expects both Australian and foreign banks and other financial institutions operating in Australia to support landlords and tenants as they work to implement the Code.
- The Commonwealth Government will waive rents for all its SME enterprises and not-for-profit tenants within its owned and leased property across Australia. The Rent Relief Policy will include a mutual obligation requirement on the small and medium sized enterprises and not-for-profit tenants to continue to engage their employees through the JobKeeper initiative where eligible, and if applicable, provide rent relief to their subtenants.

### **The Code of Conduct - Overarching Principles:**

It is intended that landlords will agree to tailored, bespoke and appropriate temporary arrangements for each SME tenant. The following overarching principles apply in guiding such arrangements:

- Landlords and tenants share a common interest in working together, to ensure business continuity, and to facilitate the resumption of normal trading activities at the end of the COVID-19 pandemic during a reasonable recovery period.
- Landlords and tenants will be required to discuss relevant issues, to negotiate appropriate temporary leasing arrangements, and to work towards achieving mutually satisfactory outcomes.
- Landlords and tenants will negotiate in good faith.
- Landlords and tenants will act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code.
- Any agreed arrangements will consider the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.
- The Parties will assist each other in their respective dealings with other stakeholders including governments, utility companies, and banks/other financial institutions in order to achieve outcomes consistent with the objectives of this Code.
- All premises are different, as are their commercial arrangements; it is therefore not possible to form a collective industry position. All Parties recognise the intended application, legal constraints and spirit of the *Competition and Consumer Act 2010*.
- The Parties will consider the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.
- All leases must be dealt with on a case-by-case basis, considering factors such as whether the SME tenant has suffered financial hardship due to the COVID-19 pandemic; whether the tenant's lease has expired or is soon to expire; and whether the tenant is in administration or receivership.
- Leases have different structures, different periods of tenure, and different mechanisms for determining rent. Leases may already be in arrears. Leases may already have expired and be in "hold-over". These factors should also be considered in formulating any temporary arrangements in line with this Code.

- As the objective of this Code is to mitigate the impact of the COVID-19 pandemic on the tenant, due regard should be given to whether the tenant is in administration or receivership, and the application of the Code modified accordingly.

The code of conduct also includes a set of leasing principles, examples of the application of the principle of proportionality, definitions and other important information. Members are encouraged to familiarise themselves with the [code of conduct](#) before approaching their landlords or tenants.

### **Ai Group input to Governments**

Ai Group continue to make representations to Government to convey information that Members are providing us about their role in the provision of essential services, in essential supply chains and regarding other significant matters, such as this.

We will keep Members abreast of any changes as they occur.

### **Useful Links**

[Transcript](#): 29 Mar 2020, Prime Minister

[Media Statement](#): 29 Mar 2020, Prime Minister

[Media Statement](#): 7 April 2020, Prime Minister

[National Cabinet Mandatory Code of Conduct](#): SME Commercial Leasing Principles During COVID-19

### **Do you require further advice?**

Ai Group has set up a special [section on our website](#) to provide access to Ai Group advice and assistance relating to the COVID-19 pandemic.

A handwritten signature in black ink, appearing to read 'Peter Burn'.

**Peter Burn,**  
**Head of Influence and Policy**

### **FURTHER INFORMATION**

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77.