



# Commercial Tenancy Relief Scheme Regulations 2021 (Vic)

## Summary as at 25 August 2021

NB: Nothing contained in this table constitutes legal advice. Our comments, observations and interpretations are preliminary only and are likely to change as experiences and thinking develop over time. We will continue to make updates and alterations, so please keep checking back as much as you like. Requests for specific legal advice should be made directly to our team.

Regulation	Summary	Comments
3	<p><b>Commencement</b></p> <p>The Regulations have retrospective operation on and from 28 July 2021.</p>	
4	<p><b>Definitions</b></p> <ul style="list-style-type: none"> <li>• Protection period: 28 July 2021 to 15 January 2022.</li> <li>• Reassessment date: 31 October 2021.</li> <li>• Rent relief period: 28 July 2021 (but see Reg. 28 for an exception) to 15 January 2022.</li> </ul>	
<b>Eligibility</b>		
5	<p><b>Prescribed eligible lease</b></p> <p>A retail lease or non-retail commercial lease or licence:</p> <ul style="list-style-type: none"> <li>• in effect on 28 July 2021 (or renewal, extension or variation pursuant to an option or on substantially the same terms)</li> <li>• the tenant is an eligible tenant</li> <li>• not excluded under Regs. 7 or 8.</li> </ul>	
6	<p><b>Change in trading hours protection</b></p> <p>If a tenant reduces its opening hours or closes its premises during the protection period, its lease is prescribed as an eligible lease and the tenant does not need to satisfy the decline in turnover test to be an eligible tenant.</p>	



Regulation	Summary	Comments
7	<p><b>Excluded class of lease – agriculture</b></p> <p>Where premises used predominantly for agriculture, farming or grazing.</p>	
8	<p><b>Excluded class of lease – listed corporation</b></p> <p>Listed companies (Australian and foreign) and subsidiaries of listed companies.</p>	
9	<p><b>Eligible tenant</b></p> <p>A tenant is an eligible tenant if, as at 28 July 2021, it:</p> <ul style="list-style-type: none"> <li>• carried on business in Australia;</li> <li>• is an SME entity; and</li> <li>• had a decline in turnover of at least 30 per cent.</li> </ul> <p>The following types of tenants are excluded:</p> <ul style="list-style-type: none"> <li>• Government agencies and bodies, and those tenants wholly owned by government agencies and bodies</li> <li>• Companies in liquidation</li> <li>• Individuals in bankruptcy</li> <li>• Tenants who are <i>connected with</i> or <i>affiliates of</i> entities with an aggregate turnover exceeding \$50 million in the 2020/21 financial year (or likely to be had the tenant carried on business for the whole of that financial year).</li> </ul>	
10	<p><b>SME entity</b></p> <p>A tenant is an SME entity if, in the current financial year, its turnover was less than \$50 million (or is likely to be less than \$50 million if it traded for the whole year).</p>	
<b>Decline in turnover</b>		
11	<p><b>Turnover</b></p> <ul style="list-style-type: none"> <li>• Includes any turnover derived from online sales of goods and services.</li> <li>• Does not include any grant or financial assistance provided by the Commonwealth to mitigate the effects of COVID-19.</li> </ul>	



Regulation	Summary	Comments
12	<p><b>Decline in turnover test</b></p> <p>Shortfall as compared with comparison turnover period equals or exceeds 30 per cent (with some specific exceptions, eg. non-government schools at 15 per cent).</p>	
13	<p><b>Turnover test period</b></p> <ul style="list-style-type: none"> <li>For businesses trading before 1 April 2021: Any consecutive three month period (chosen by the tenant) between 1 April 2021 and 30 September 2021, commencing on the first day of a month.</li> <li>For businesses trading on or after 1 April 2021: A period agreed in good faith.</li> </ul>	
14	<p><b>Comparison turnover</b></p> <ul style="list-style-type: none"> <li>Tenant's turnover for the relevant comparison period (see Reg. 15); or</li> <li>If an alternative comparison turnover applies (see Regs. 16 to 23). If more than one alternative applies, the tenant may choose which one to apply.</li> </ul>	
15	<p><b>Relevant comparison period</b></p> <p>The primary position is that the relevant comparison period is the corresponding three month period in 2019, however there are many alternatives (see below).</p> <p>The reassessment period (Reg. 29(2)) depends on when the tenant commenced trading (whether or not at the premises).</p> <ul style="list-style-type: none"> <li>If trading commenced before 1 July 2019: the quarter ending on 30 September 2019.</li> <li>If trading commenced between 1 July 2019 and 31 March 2021: The quarter ending on 30 June 2021.</li> </ul>	
<b>Alternative comparison turnover methods</b>		
16	<p><b>Business began trading on/after 1 April 2019</b></p> <ul style="list-style-type: none"> <li>If a tenant commenced trading between 1 April 2019 and 31 March 2020, comparison turnover = average monthly turnover (from commencement to 1 April 2020, in whole months) x 3.</li> <li>If a tenant commenced trading between 1 April 2020 and 31 March 2021, comparison turnover = average monthly turnover (from commencement to 31 July 2021, in whole months) x 3.</li> <li>If a tenant commenced trading after 31 March 2021, comparison turnover = average daily turnover (from commencement to 31 July 2021) x 92.</li> </ul>	



Regulation	Summary	Comments
17	<p><b>Business acquisition/disposal that changed tenant's comparison turnover</b></p> <p>Applies if there was an acquisition or disposal of part of the tenant's business on or after the start of the relevant comparison period and before the turnover test period that changed the comparison turnover.</p> <ul style="list-style-type: none"> <li>Comparison turnover = turnover for the month immediately after the transaction x 3. If there is no whole month available, use the month immediately before the turnover test period.</li> </ul>	
18	<p><b>Business restructure that changed tenant's comparison turnover</b></p> <p>Applies if there was a restructure of a tenant's business (or part) on or after the start of the relevant comparison period and before the turnover test period that changed the comparison turnover.</p> <ul style="list-style-type: none"> <li>Comparison turnover = turnover for the month immediately after the transaction x 3. If there is no whole month available, use the month immediately before the turnover test period.</li> </ul>	We query what the term "restructure" in fact means in this context.
19	<p><b>Tenant has substantial increase in turnover</b></p> <p>If a tenant's turnover has increased:</p> <ul style="list-style-type: none"> <li>by 50 per cent or more in the 12 months immediately before the turnover test period;</li> <li>by 25 per cent or more in the 6 months immediately before the turnover test period; or</li> <li>by 12.5 per cent or more in the 3 months immediately before the turnover test period,</li> </ul> <p>the comparison period is the last three months immediately before the turnover test period.</p>	
20	<p><b>Business affected by drought or national disaster</b></p> <p>Comparison turnover = turnover for the same period in the year immediately before the declaration of disaster.</p>	
21	<p><b>Business has irregular turnover</b></p> <p>If there is a delta of 50 per cent or more between high and low income in a three month consecutive period during the 12 months prior to the turnover test period.</p> <ul style="list-style-type: none"> <li>Comparison turnover = average monthly turnover x 3.</li> </ul>	We anticipate that this will be a commonly used alternative due to the impact of COVID in 2020.
22	<p><b>Sole trader/small partnership with sickness, injury or leave</b></p> <p>Applies if the tenant has no employees, the sole trader or a partner did not work for part or all of the relevant comparison period due to sickness, injury or leave and turnover was affected.</p> <ul style="list-style-type: none"> <li>Comparison turnover = turnover for month prior to sickness, injury or leave x 3.</li> </ul>	



Regulation	Summary	Comments
23	<p><b>Tenant temporarily ceased trading during relevant comparison period</b></p> <p>Applies if there was a cessation of trade due to reasons outside of ordinary business for a week or more, and some or all of the relevant comparison period occurring during the cessation period.</p> <ul style="list-style-type: none"> <li>• Comparison turnover = three months prior to cessation of trade, or the comparison period for the previous year (at the tenant's election).</li> </ul>	We anticipate that this will be a commonly used alternative due to the impact of COVID in 2020.
<b>General obligations on landlords and tenants</b>		
24	<p><b>Landlords and tenants must work cooperatively</b></p> <p>Landlords and tenants must cooperate and act reasonably and in good faith.</p>	This provision is deemed into eligible leases and a breach of this Regulation will be a breach of the lease (although not of an essential term).
25	<p><b>Offence to provide false and misleading information</b></p> <p>A party must not give information or make a statement which it knows or has reason to believe to be false or misleading, or produce a document to that effect without indicating which part is false or misleading and, if practicable, providing correct information.</p>	An offence under this Regulation is punishable by a fine of \$3,634.80.
<b>Rent, outgoings and other expenses</b>		
26	<p><b>Non-payment of rent or outgoings during protection period</b></p> <p>A tenant is not in breach of its lease if, <i>before</i> a relief agreement is made:</p> <ul style="list-style-type: none"> <li>• a request for relief has been made and has not lapsed; and</li> <li>• the tenant continues to pay a portion of the rent due under the lease (equal to rent reduced by same percentage as tenant's decline in turnover).</li> </ul> <p>A tenant is not in breach of its lease if, <i>after</i> a relief agreement is made:</p> <ul style="list-style-type: none"> <li>• the tenant complies with the agreement; or</li> <li>• the tenant is unable to trade as a result of illness or injury or a natural disaster that prevents trade.</li> </ul>	<p>A landlord may take action against a tenant outside of these circumstances, apart from when Reg. 38 – election to cease trading – applies.</p> <p>It is an offence to evict a tenant, re-enter premises, draw down on security or attempt to do these things if the tenant complies with its obligations, punishable by a fine of \$3,634.80.</p>



Regulation	Summary	Comments
27	<p><b>Rent relief</b></p> <p>A request for rent relief must include a statement from the tenant as to the following:</p> <ul style="list-style-type: none"> <li>• eligible tenant</li> <li>• satisfies decline in turnover test, setting out: <ul style="list-style-type: none"> <li>• turnover for the turnover test period, and which period used;</li> <li>• comparison turnover, and how derived (i.e. which alternative under the Regulations and how calculated);</li> <li>• tenant's decline in turnover;</li> <li>• reduction in rent that would satisfy minimum requirements of landlord's offer; and</li> <li>• other circumstances the tenant would like the landlord to consider.</li> </ul> </li> </ul> <p>Within <b>14 days</b> of making the request, the tenant must provide to the landlord information evidencing turnover figures, including at least one of:</p> <ul style="list-style-type: none"> <li>• extracts from accounting records</li> <li>• BAS</li> <li>• bank statements</li> <li>• statement from an accountant,</li> </ul> <p>with a <b>statutory declaration</b> made by the tenant as to eligibility and truth of the information provided to the landlord.</p> <ul style="list-style-type: none"> <li>• <i>Request lapses if 14 day timeframe not met: three strike rule for tenant.</i></li> </ul> <p>Offer to be made within 14 days or as agreed and be:</p> <ul style="list-style-type: none"> <li>• proportional to the tenant's decline in turnover (minimum)</li> <li>• 50 per cent waiver (minimum)</li> <li>• account for rent paid since the request was made;</li> <li>• exhibit that 'other circumstances' have been considered; and</li> <li>• if in respect of a gross lease, must not carve out outgoings.</li> </ul> <p><i>Parties required to negotiate in good faith if offer not accepted.</i></p> <p><i>Deemed agreement after 15 days if agreement not superseded or SBC application not made.</i></p>	<p>Timeframes are tight in this regime, with deeming provisions and SBC applications looming. Parties should give consideration to agreeing to extending timeframes up front as required.</p> <p>Compliant requests and offers are critical. VCAT decisions concerning the previous CTRS regime should be considered as pointing towards timeframes not being triggered where there is non-compliance.</p>
28	<p><b>Rent relief period</b></p> <p>Commencement date of rent relief period:</p> <ul style="list-style-type: none"> <li>• If a compliant request is made before 30 September 2021 – backdated to 28 July 2021.</li> <li>• If a compliant request is made after 30 September 2021, the date of the request.</li> </ul>	



Regulation	Summary	Comments
29	<p><b>Mandatory reassessment of rent relief agreement</b></p> <p>Applies if a rent relief agreement has been made, the tenant's request was made before 30 September 2021 and the tenant began trading before 1 April 2021.</p> <p>Where the request is made prior to 30 September 2021, the tenant will be required to provide actual turnover to that date with a calculation of the difference between that turnover and the comparison turnover.</p> <ul style="list-style-type: none"> <li>• tenant to provide the information by 31 October 2021 verified by statutory declaration</li> <li>• and state: <ul style="list-style-type: none"> <li>• turnover for the test period</li> <li>• comparison turnover and method by which it was derived (i.e. the relevant alternative)</li> <li>• the <i>change in turnover</i> calculated as the difference between the tenant's turnover for the turnover test period and the tenant's comparison turnover, expressed as a percentage of the tenant's comparison turnover.</li> </ul> </li> </ul> <p><i>Failure to provide the information in time</i> the rent relief agreement no longer applies to waiver of rent (only) from the reassessment date (with exceptions for illness, injury or natural disaster).</p>	<p>The purpose is to adjust the relief in the event of a change in actual turnover during the relevant period to 30 September 2021.</p> <p>The rent relief will be adjusted (for the remainder of the prescribed period) for the delta between this calculation and the original calculation on which the relief was based/requested.</p> <p>The failure of a tenant to comply seems not to count the tenant out of making a subsequent request for rent relief if its financial circumstances have changed (Reg. 30). However, good faith arguments may come into play.</p>
30	<p><b>Subsequent rent relief</b></p> <p>A subsequent request may be made where the tenant's financial circumstances materially change.</p>	Request to be as per Reg. 27.
31	<p><b>Extension of the term</b></p> <p>Must be offered for the same period as relief is provided in the form of a deferral.</p>	For example, deferral of three months' rent would equal an offer to extend the lease by three months.
32	<p><b>Payment of deferred rent</b></p> <p>Not until after 15 January 2022, over the greater of the remaining term of the lease or 24 months in instalments.</p> <p>The lease is deemed <i>varied</i> in this regard.</p>	<p>The only area for negotiation here is the monthly instalment amount. But the tenant may insist on equal instalments.</p> <p>Parties could conceivably reach a separate agreement about the minimum rent relief to cover their obligations under the Regs. Separately they could conceivably, outside of the Regs, provide additional relief which would be free of these kind of strict outcomes.</p>



Regulation	Summary	Comments
33	<p><b>Further deferral of rent under a 2020 lease</b></p> <p>If the current lease is the same lease or <i>in substance</i> a renewal or extension or replacement of that lease and a relief request is made under these Regs, the formerly deferred rent is further deferred until after 15 January 2022.</p>	
34	<p><b>No fees, interest or charges</b></p> <p>The lease is deemed to include this provision – a landlord must not require a tenant to pay interest or any other fee or charge in relation to deferred rent.</p>	
35	<p><b>Prohibition on rent increases</b></p> <p>A review whereby rent increases under the lease during the protection period is void. The increase may never be claimed by the landlord.</p>	<p>The review is not merely delayed or deferred, the landlord's right to a review disappears.</p> <p>The tenant, however, could call for a market review and take advantage of it if the rent reduces.</p> <p>Consideration enforceability of this regulation is required in the context of section 35 of the Retail Leases Act.</p>
36	<p><b>Recovery of outgoings or expenses</b></p> <p>The following are <i>deemed</i> into the lease:</p> <ul style="list-style-type: none"> <li>landlord must consider waiving recovery of any outgoings during a period where the tenant is unable to operate their business</li> <li>landlord may cease/adjust services as reasonable or on request from a tenant.</li> </ul>	<p>This obligation sits separately from any in relation to a request for rent relief.</p> <p>The tenant must be unable to trade. Therefore choosing not to trade will not trigger this obligation.</p>
37	<p><b>Reduction in outgoings</b></p> <p>The following are <i>deemed</i> into the lease:</p> <ul style="list-style-type: none"> <li>reductions in outgoings must be applied proportionately amongst tenants</li> <li>any amount paid by a tenant greater than its adjusted share must be reimbursed as soon as possible.</li> </ul>	
<b>Change in trading hours</b>		
38	<p><b>Tenant may reduce business hours or cease business during protection period</b></p> <p>Tenant may reduce hours or close its business without being in breach of its lease.</p>	





Regulation	Summary	Comments
<b>Other obligations</b>		
39	<p><b>Confidentiality</b></p> <p>This obligation is <b>deemed</b> into the lease:</p> <p>Parties must not divulge protected information provided under these Regulations (with usual exceptions of consent, law and advice). Protected information includes personal information (i.e. address and contact details) and financial and trade information.</p>	
<b>Dispute resolution</b>		
40	<p><b>Referral for mediation by SBC</b></p> <p>A landlord or tenant under an eligible lease may refer an eligible lease dispute to the SBC for mediation. The application must be accompanied by:</p> <ul style="list-style-type: none"> <li>• <i>(if the dispute relates to the tenant's request for rent relief)</i> the tenant's written request for rent relief and all other materials given to the landlord by the tenant; and</li> <li>• <i>(if the dispute relates to the mandatory reassessment of a rent relief agreement)</i> the tenant's written information and all other materials given to the landlord by the tenant; and</li> <li>• all relevant correspondence between the landlord and tenant and related materials; and</li> <li>• the contact details of the other party, including postal address and phone number; and</li> <li>• any other material requested by the VSBC; and</li> </ul> <p>The application may be accompanied by evidence of, or a written submission about, the conduct of the landlord and tenant with respect to any rent relief under a 2020 lease with each other.</p> <p>The SBC must give written notice of the application (<b>dispute notice</b>) to the landlord/tenant against whom the application is made and specify the time within which the party must provide a response and the consequences of failing to respond or providing a non-compliant response.</p> <p>On receipt of a dispute notice, a party must provide a response to the SBC within 10 business days.</p> <p>If the landlord/tenant does not respond to the dispute notice, does not sufficiently respond or responds out of time, the SBC may arrange mediation or issue a Certificate.</p> <p>Mediation is not limited to formal mediation procedures and extends to preliminary assistance provided by the SBC.</p> <p>The parties must not use mediation to prolong or frustrate reaching an agreement.</p>	



Regulation	Summary	Comments
41	<p><b>Regulation 41 certificate</b></p> <p>The SBC may issue a Certificate that mediation has failed or is unlikely to resolve the eligible lease dispute if it is of the view that either the landlord or the tenant has not engaged in the mediation process in good faith.</p> <p>The Certificate may record that a party has failed to respond or sufficiently respond to a dispute notice, or has not engaged in mediation in good faith in the SBC's opinion.</p>	
42	<p><b>Legal representation</b></p> <p>Either party to an eligible lease dispute may be legally represented at mediation. A mediator may meet with the parties without their legal representatives if he/she considers it appropriate to do so.</p>	
<b>Binding orders</b>		
43	<p><b>Application for binding order</b></p> <p>A tenant may apply for a binding order if:</p> <ul style="list-style-type: none"> <li>• the dispute relates to a tenant's request for rent relief; and</li> <li>• the SBC has issued a Certificate to the landlord and tenant in respect of the dispute; and</li> <li>• the Certificate records that the landlord or tenant has failed to respond or sufficiently respond to the dispute notice, or not engaged in mediation in good faith in the SBC's opinion; and</li> <li>• the tenant has not commenced a proceeding in VCAT or a court in relation to the dispute.</li> </ul> <p>The application must be in writing, in the form specified by the SBC and be accompanied by all relevant correspondence and materials not previously provided to the SBC. It may be accompanied by a written submission.</p>	The bestowing of, in effect, judicial power by these regulations requires careful consideration, particularly in the absence of natural justice measures, especially hearings.
44	<p><b>Notice of application for binding order</b></p> <p>The SBC must give notice of any application for a binding order to the landlord as soon as practicable, together with a copy of all documents filed by the tenant.</p> <p>Within 5 business days of receiving the material, the landlord may give the SBC any material the landlord considers the tenant has failed to provide, and a written submission on the application.</p>	



Regulation	Summary	Comments
45	<p><b>SBC may request further information</b></p> <p>The SBC may, within a specified time frame, request:</p> <ul style="list-style-type: none"> <li>• the landlord or tenant to provide further material; and</li> <li>• the tenant to provide evidence that it has taken reasonable steps and acted in good faith to seek to agree rent relief with the landlord.</li> </ul>	
46	<p><b>No hearings</b></p> <p>The SBC must not hold any form of hearing for an application for a binding order.</p>	
47	<p><b>Decision to make binding order</b></p> <p>The SBC <u>must</u> make a binding order if:</p> <ul style="list-style-type: none"> <li>• notice has been given to the landlord;</li> <li>• neither the tenant or the landlord has commenced a proceeding in VCAT or a court in relation to the eligible lease dispute;</li> <li>• the SBC is satisfied that the application complies with the requirements; and</li> <li>• the SBC is satisfied it is fair and reasonable in all of the circumstances to make the binding order.</li> </ul> <p>If one or more of the above does not apply, the SBC must dismiss the application and give written notice to the parties within 5 business days of dismissal.</p> <p>In deciding whether to make a binding order, the SBC:</p> <ul style="list-style-type: none"> <li>• must have regard to the written submissions, correspondence, evidence and other material provided by the tenant or the landlord in accordance with the Regulations; and</li> <li>• may have regard to any submission, evidence or other material provided outside the relevant time period; and</li> <li>• may have regard to any evidence of the parties' conduct with respect to rent relief under a 2020 lease with each other.</li> </ul>	
48	<p><b>Binding orders</b></p> <p>A binding order must state:</p> <ul style="list-style-type: none"> <li>• the direction to the landlord to give or agree to give specified rent relief; and</li> <li>• the reasons for ordering the specified rent relief.</li> </ul> <p>The SBC must give a copy of the binding order to the parties within 5 business days of it being made. It comes into effect immediately after a copy is given to the landlord.</p>	



Regulation	Summary	Comments
49	<p><b>What a binding order may require</b></p> <p>A direction to give, or agree to give, specified rent relief in a binding order must comply with Reg. 27(8) as if the direction were an offer of rent relief.</p> <p>The binding order may require the landlord to do either or both of the following:</p> <ul style="list-style-type: none"> <li>• waive part or all of the rent payable under an eligible lease for the rent relief period;</li> <li>• defer payment of part of the rent payable under an eligible lease for the rent relief period, with the deferred rent to be repaid amortised over the greater of the balance of the term of the lease (including any extension as provided under Reg. 31 or otherwise) or a period of no less than 24 months.</li> </ul> <p>The binding order may specify the method by which deferred rent is to be amortised.</p>	
50	<p><b>Cessation of binding order process</b></p> <p>If a tenant has made an application for a binding order and the SBC has not yet determined the application, the landlord and tenant may jointly notify the SBC that they have agreed on the rent relief and a binding order is no longer required.</p> <p>The SBC must dismiss the application and give written notice that it has done so within 5 business days of dismissal.</p>	
51	<p><b>Application for amendment or revocation of binding order</b></p> <p>If a binding order has been made, either a landlord or tenant may apply to the SBC in writing for the order to be amended or revoked.</p>	<p>The circumstances in which an application for amendment or revocation can be made have not been specified – but may include, for example, a change in the tenant's financial circumstances.</p>
52	<p><b>SBC may dismiss application in certain circumstances</b></p> <p>The SBC may dismiss an application to amend or revoke a binding order if it considers that it is not have sufficient merit to justify further consideration. It must give written notice to both parties within 5 business days of dismissal.</p>	
53	<p><b>SBC may propose amendment on its own initiative</b></p> <p>The SBC may propose an amendment to a binding order. However, unless exceptional circumstances apply, the SBC must not propose an amendment other than one to correct a mistake, error or defect.</p>	



Regulation	Summary	Comments
54	<p><b>SBC to give notice if amendment or revocation is to be considered</b></p> <p>If the SBC receives an application to amend or revoke a binding order which it does not dismiss, it must give notice to the other party as soon as practicable.</p> <p>If the SBC proposes an amendment on its own initiative, it must give notice to both parties.</p> <p>Parties may make a written submission to the SBC within 5 business days of being notified.</p>	
55	<p><b>SBC may request further information</b></p> <p>The SBC may, within a specified time frame, request the landlord or tenant to provide further material for the purposes of considering the application to amend or revoke a binding order or an own initiative proposal.</p>	
56	<p><b>No hearings</b></p> <p>The SBC must not hold any form of hearing for an application to amend or revoke a binding order.</p>	
57	<p><b>Amending or revoking a binding order</b></p> <p>In deciding whether or not to grant the application to amend or revoke a binding order, or make the proposed amendment, the SBC:</p> <ul style="list-style-type: none"> <li>• must have regard to a submission filed by a party and material provided in response to a request by the SBC; and</li> <li>• may have regard to any submission, evidence or other material provided outside the relevant time period; and</li> <li>• may consider any other relevant matter, including whether the binding order contains a mistake, error or defect.</li> </ul> <p>An amendment or revocation takes effect immediately after a copy of the amended order or notice of revocation is given to the landlord.</p>	
58	<p><b>Notice of amendment or revocation of binding order</b></p> <p>The SBC must give a copy of the amended order or notice of revocation to both parties within 5 business days after amending/revoking the order.</p>	



Regulation	Summary	Comments
<b>Review by VCAT</b>		
59	<p><b>Application for review by VCAT</b></p> <p>A landlord or tenant may apply to VCAT for review of decisions relating to binding orders or amendment/revocation of binding orders. Any application must be made within 14 days after the SBC's decision.</p> <p>An application for review of a decision to make a binding order stays the operation of the binding order unless VCAT otherwise orders.</p>	
60	<p><b>Contravention of binding orders</b></p> <p>A tenant who considers its landlord has not complied with a binding order may apply to VCAT for a determination as to compliance. VCAT may order the landlord to comply with the binding order or amend the binding order.</p>	
<b>Other matters</b>		
61	<p><b>Severing, dividing or combining matters in eligible lease disputes</b></p> <p>The SBC has power to sever, divide or combine matters as it sees fit.</p>	
62	<p><b>Evidentiary status of statements made during mediation and binding order process</b></p> <p>Nothing said or done by a landlord, tenant, their legal representatives or the SBC is admissible in proceedings before VCAT or a court.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <li>• evidence of a written communication from the SBC to the parties where both parties agree in writing or VCAT/the court otherwise orders; and</li> <li>• information or documents disclosed in mediation for the purposes of deciding whether a binding order should be made, amended or set aside.</li> </ul>	
63	<p><b>No restriction on s10(1)(c) of the Act</b></p> <p>The SBC has power to commence proceedings for offences against the Regulations.</p>	



Regulation	Summary	Comments
<b>Determination of eligible lease disputes by VCAT or a court</b>		
64	<p><b>VCAT's jurisdiction</b></p> <p>VCAT has jurisdiction to hear and determine eligible lease disputes.</p>	
65	<p><b>Determination by VCAT or a court</b></p> <p>An eligible lease dispute may only be the subject of proceedings in VCAT or a court if the SBC has issued a Certificate in respect of the dispute, unless it is for orders in the nature of an injunction.</p>	
<b>General provisions</b>		
66	<p><b>Indemnities</b></p> <p>Any provision in an eligible lease, agreement or security related to an eligible lease which purports to indemnify, or require the tenant or security provider to indemnify, the landlord against any action, liability, penalty, claim or demand for or to which the landlord would be liable or subject, but for the effect of the Regulations, is void.</p>	
67	<p><b>Giving notices</b></p> <p>Notices may be given by delivering them personally, sending them by post to a registered office or last known address, giving them to a person authorised to accept service or by electronic means. In addition, notices or documents to be given to a landlord may be given to the landlord, the landlord's agent or to the person who usually collects the rent.</p>	
68	<p><b>Revocation of Regulations</b></p> <p>The Regulations are revoked on 16 January 2022.</p>	

