



COVID-19 and retail/commercial leases: legislation compendium

As the legislation governing the landlord and tenant relationship continues to emerge in response to the COVID-19 crisis, we're continuing to review the legislation across the states for you. Our compendium below gives a picture so far and we will continue to update it as new regulations are passed.

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RELEVANT LEGISLATION

State	Legislation	Commencement date	Operative date
Victoria	COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic) (VIC Act)	25 April 2020	
	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (VIC Regs)	1 May 2020	29 March 2020
New South Wales	COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW) (NSW Act)	25 March 2020	
	Part 11, Retail Leases Act 1994 (NSW) (NSW RLA) Retail and Other Commercial Leases (COVID-19) Regulation 2020 (NSW) (NSW Regs)	24 April 2020	25 March 2020
Queensland	COVID-19 Emergency Response Act 2020 (QLD Act) Regulations yet to be released	23 April 2020	
South Australia	COVID-19 Emergency Response Act 2020 (SA) (SA Act)	9 April 2020	30 March 2020
	COVID-19 Emergency Response (Commercial Leases) Regulations 2020 (SA) (SA Regs #1)	16 April 2020	16 April 2020
	Regulations yet to be released		
Western Australia	Commercial Tenancies (COVID-19 Response) Act 2020 (WA) (WA Act)	24 April 2020	30 March 2020
	Regulations yet to be released		
Tasmania	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Tas) (TAS Act) Regulations yet to be released	27 March 2020	
Australian Capital Territory	COVID-19 Emergency Response Act 2020 (ACT) (ACT Act)	8 April 2020	
	Part 17, Leases (Commercial and Retail) Act 2001 (ACT) (ACT Leases Act)		8 April 2020
	Regulations yet to be released		
Northern Territory	Tenancies Legislation Amendment Act 2020 (NT Act)	25 April 2020	
	Business Tenancies (Fair Dealings) Act 2003 (NT Leases Act)		25 April 2020
	Regulations yet to be released		

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COMMENCEMENT AND REPEAL

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
COMMENCEMENT							
<p><u>(s 2, VIC Act)</u> The Act comes into operation on the day after the day on which it receives the Royal Assent [24 April 2020].</p>	<p><u>(s 2, NSW Act)</u> This Act commences on the date of assent to this Act [25 March 2020].</p>	<p>The QLD Act received Royal Assent on 23 April 2020.</p>	<p><u>(s 2(1), SA Act)</u> Subject to s 2(2), the SA Act comes into operation on the day on which it is assented to by the Governor [9 April 2020]. <u>(s 2(2), SA Act)</u> Sections 7 to 9 (inclusive) will be taken to have come into operation on 30 March 2020.</p>	<p><u>(s 2, WA Act)</u> This Act comes into operation as follows: (a) Part 1 comes into operation on the day on which this Act receives the Royal Assent [24 April 2020]; (b) Parts 2 and 3 are deemed to have come into operation on 30 March 2020; and (c) the rest of the Act comes into operation on the day after the assent day.</p>	<p><u>(s 2, TAS Act)</u> This Act commences on the day on which this Act receives the Royal Assent [27 March 2020].</p>	<p>The Act was passed on 7 April 2020 and came into operation the following day [8 April 2020].</p>	<p><u>(s 2, NT Act)</u> The Act commences on the day after the day on which the Administrator's assent to this Act is declared [assented 24 April 2020].</p>
<p><u>(Reg 3, VIC Regs)</u> The Regulations are taken to have come into operation on 29 March 2020.</p>	<p><u>(Reg 2, NSW Regs)</u> The Regulation commences on the day on which it is published on the NSW legislation website [24 April 2020].</p>		<p><u>(Reg 2, SA Regs)</u> These Regulations come into operation on the day on which they are made [16 April 2020].</p>			<p><u>(Part 17, ACT Leases Act)</u> Part 17 of the ACT Leases Act was inserted into that Act on 8 April 2020.</p>	
REPEAL							
<p><u>(s 22, VIC Act)</u> Part 2.2 of the VIC Act is repealed on the day that is six months after its commencement.</p>	<p><u>(s 87(4), NSW RLA)</u> Regulations made under this section expire on – (a) the day that is six months after the day on which the regulation commences; or (b) the earlier day decided by Parliament by resolution of either House of Parliament.</p>	<p><u>(s 25, QLD Act)</u> This Act expires on 31 December 2020.</p>	<p><u>(s 6(1), SA Act)</u> The Minister: (a) may, by notice in the Gazette, fix a day, or days, on which particular provisions of Part 2 will expire; and (b) must, by notice in the Gazette, fix a day on which all provisions of Part 2 (other than section 20) will expire (if they have not previously expired in accordance with (a)); and (c) may, by notice in the Gazette, fix a day on which this Act will finally expire. <u>(s 6(2), SA Act)</u> The day fixed by the Minister for the purposes of (1)(b) must be: (a) the day on which all relevant declarations relating to the outbreak of the human disease named COVID-19 within South Australia have ceased (provided that the Minister is satisfied that there is no present intention to make a further such declaration); or (b) the day falling six months after the commencement of this section, whichever is the earlier.</p>	<p><u>(s 25, WA Act)</u> This Act is repealed at the end of the period of 12 months that begins on the day after the day on which the emergency period ends.</p>	<p><u>(s 8(2), TAS Act)</u> A notice under this Act, other than a notice revoking or amending another notice under this Act, only remains in effect, unless it is sooner revoked or subsection (3) applies, for: (a) 12 months from the day on which the notice takes effect; or (b) if a shorter period is specified in the notice, that shorter period from the day on which the notice takes effect. <u>(s 8(3), TAS Act)</u> A notice under this Act is taken to be revoked 60 days after the emergency cessation date.</p>	<p><u>(s 178, ACT Leases Act)</u> This part expires on the day the Public Health (Emergency) Declaration 2020 (No 1) (NI2020-153), as extended or further extended, ends.</p>	<p><u>(s 11, NT Act)</u> This Act is repealed on the day after it commences.</p>
<p><u>(Reg 25, VIC Regs)</u> These Regulations expire on 29 September 2020.</p>	<p><u>(Reg 12, NSW Regs)</u> The Regulation is repealed on the day that is six months after the day on which it commences [25 October 2020].</p>						



LEASES WHICH ARE COVERED

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
ELIGIBLE LEASES	IMPACTED LESSEE	RELEVANT LEASES	COMMERCIAL LEASES	SMALL COMMERCIAL LEASES	PRESCRIBED LEASES	LEASES	BUSINESS LEASES
<p><u>(s 13(1), VIC Act)</u> An eligible lease is a retail lease or a non-retail commercial lease or licence (NRCL):</p> <p>(a) that is in effect on the day the first regulations made under section 15 come into operation; and</p> <p>(b) under which the tenant is, on or after the commencement of the first regulations made under section 15 –</p> <p>(i) an SME entity; and</p> <p>(ii) an employer who qualifies for the Jobkeeper scheme and is a participant in the Jobkeeper scheme.</p> <p><u>(s 12, VIC Act)</u> Lease means a lease, sub-lease or an agreement for a lease or sub-lease, whether or not in writing or partly in writing, and whether express or implied.</p> <p><u>(s 14(1), VIC Act)</u> A non-retail commercial lease or licence (NRCL) is:</p> <p>(a) a lease of premises under which the premises are let for the sole or predominant purpose of carrying on a business at the premises; or</p> <p>(b) a commercial licence.</p> <p><u>(s 14(2), VIC Act)</u> An NRCL does not include a retail lease.</p>	<p><u>(Reg. 5, NSW Regs)</u> This Regulation applies to the exercise or enforcement of rights under a commercial lease in relation to circumstances occurring during the prescribed period.</p> <p><u>(Reg. 4(1), NSW Regs)</u> A lessee is an impacted lessee if:</p> <p>(a) the lessee qualifies for the JobKeeper scheme under ss 7 and 8 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth); and</p> <p>(b) the following turnover in the 2018-2019 financial year was less than \$50 million –</p> <p>(i) if the lessee is a franchisee – the turnover of the business conducted at the premises or the land concerned;</p> <p>(ii) if the lessee is a corporation that is a member of a group – the turnover of the group;</p> <p>(iii) in any other case – the turnover of the business conducted by the lessee.</p> <p><u>(Reg 4(2), NSW Regs)</u> To avoid doubt, in this clause, turnover of a business includes any turnover derived from internet sales of goods or services.</p> <p><u>(Reg 4(3), NSW Regs)</u> In this clause, corporations constitute a group if they are related bodies corporate within the meaning of the Corporations Act 2001 (Cth).</p>	<p><u>(s 24(8), QLD Act)</u> A relevant lease means:</p> <p>(a) a retail shop lease under the Retail Shop Leases Act 1994 (QLD); or</p> <p>(b) a lease prescribed by regulation for this definition.</p> <p>Lease includes a lease, sub-lease, licence or other agreement which a person grants a right to another person to occupy premises, other than as a residence.</p>	<p><u>(s 16, SA Act)</u> Commercial lease means:</p> <p>(b) a retail shop lease within the meaning of the Retail and Commercial Leases Act 1995 (SA);</p> <p>(c) a lease under the Landlord and Tenant Act 1936 (SA), including a retail shop lease to which Part 4 of that Act applies;</p> <p>(d) any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business:</p> <p>(i) whether or not the right is a right of exclusive occupation; and</p> <p>(ii) whether the agreement is expressed or implied; and</p> <p>(iii) whether the agreement is oral or in writing, or partly oral and partly in writing.</p> <p><u>(Reg. 4(1), SA Regs)</u> Pursuant to s 19(2)(a) of the SA Act, for the purposes of s 7 of the SA Act, a lessee will be taken to be suffering financial hardship as a result of the COVID-19 pandemic if the lessee is eligible for, or receiving, a JobKeeper payment in respect of the business of the lessee (whether in their capacity as an employer or on their own behalf).</p>	<p><u>(s 3, WA Act)</u> Small commercial lease means:</p> <p>(a) a retail shop lease as defined in the Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA) section 3(1); or</p> <p>(b) a lease where the tenant owns or operates a small business and uses the land or premises that are the subject of the lease for the purpose of carrying on that business; or</p> <p>(c) a lease where the tenant is an incorporated association as defined in the Associations Incorporation Act 2015 (WA) section 3; or</p> <p>(d) any other lease that is of a class prescribed by regulations for the purposes of this paragraph.</p> <p>Lease means any lease, sub-lease, licence or other agreement under which a person grants a right to another person to occupy land or premises:</p> <p>(a) whether or not the right is a right of exclusive occupation; and</p> <p>(b) whether the lease, sub-lease, licence or agreement is made orally or in writing.</p>	<p><u>(s 22, TAS Act)</u> The COVID-19 provisions will apply to “a lease that is within a class of leases specified in the notice” made by the Minister.</p>	<p><u>(s 177, ACT Leases Act)</u> The COVID-19 provisions will apply to any lease which to which the ACT Leases Act applies, including a lease prescribed under s 12(2)(a) and (b).</p>	<p><u>(s 11B, NT Leases Act)</u> The COVID-19 provisions will apply to:</p> <p>(a) a business premises or a business lease to which the NT Leases Act applies; and</p> <p>(b) an arrangement (an occupation arrangement) for the occupation of premises for business purposes that is an arrangement to which the NT Leases Act, but for this section, does not apply.</p> <p><u>(s 11B(3)(b)(i), NT Leases Act)</u> Without limiting s 2(b), the Minister is empowered to make provisions in relation to aspects of business leases or occupation arrangements to which the NT Leases Act does not otherwise apply.</p>



LEASES WHICH ARE NOT COVERED

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(s 13(2), VIC Act)</u> An eligible lease does not include a retail lease or NRCL, or a retail lease or a NRCL of a specified class, that is prescribed. <u>(Reg 6, VIC Regs)</u> For the purposes of s 13(2), an eligible lease does not include a retail lease or a NRCL under which the premises may be used wholly or predominantly for any of the following activities:</p> <ul style="list-style-type: none"> (a) agricultural, pastoral, horticultural or apicultural activities; (b) poultry farming, dairy farming, aquaculture, tree-farming or any business that consists of the cultivation of soils, the gathering of crops or rearing of livestock; (c) grazing, including agistment; (d) any activity prescribed for the purposes of paragraph (c) of the definition of farming operation in s 3 of the Farm Debt Mediation Act 2011 (Vic). <p><u>(s 13(3), VIC Act)</u> Despite s 13(1), a retail lease or NRCL is not an eligible lease if:</p> <ul style="list-style-type: none"> (a) the tenant under the retail lease or NRCL is a member of a prescribed group of entities and the aggregate turnover of the prescribed group of entities exceeds the prescribed amount; (b) there is a relationship or connection between the tenant under the retail lease or NRCL and another entity that is prescribed and the aggregate turnover of the tenant and the other entity exceeds the prescribed amount; or (c) an entity has a prescribed method of control or influence, through the holding of a prescribed interest, right or power, in relation to acts or decisions relating to the ownership, management or affairs of a tenant under the retail lease or NRCL that is a body corporate. <p><u>(Reg 7(1), VIC Regs)</u> For the purposes of s 13(3)(a):</p> <ul style="list-style-type: none"> (a) a prescribed group is a tenant that is connected, within the meaning of s 328-125 of the Income Tax Assessment Act 1997 (Cth), with another entity or other entities; and 	<p><u>(Reg 3(1), NSW Regs)</u> A commercial lease means a retail shop lease, but does not include the following:</p> <ul style="list-style-type: none"> (a) a lease entered into after the commencement of this Regulation, but not a lease entered into by means of an option to extend or renew the lease or any other extension or renewal of an existing lease on the same terms as the existing lease on the same terms as the existing lease; (b) a lease under the Agricultural Tenancies Act 1990; or (c) a commercial lease within the meaning of Schedule 5 to the Conveyancing (General) Regulation 2018. 		<p><u>(s 16, SA Act)</u> A commercial lease does not include:</p> <ul style="list-style-type: none"> (a) a lease under the Pastoral Land Management and Conservation Act 1989 (SA); or (b) a lease under the Crown Land Management Act 2009 (SA). 	<p><u>(s 3(b), WA Act)</u> A lease does not include any of the following:</p> <ul style="list-style-type: none"> (i) a long-stay agreement to which the Residential Parks (Long-stay Tenants) Act 2006 applies; (ii) a residential tenancy agreement to which the Residential Tenancies Act 1987 applies; (iii) a pastoral lease as defined in the Land Administration Act 1997 section 3; (iv) a mining tenement as defined in the Mining Act 1978 section 8; (v) any other lease, sub-lease, licence or other agreement that is of a class prescribed by regulations for the purposes of this paragraph. 			



<p>(b) \$50 million is the prescribed amount.</p> <p><u>(Reg 7(2), VIC Regs)</u></p> <p>For the purposes of s 13(3)(b):</p> <p>(a) There is a prescribed relationship or connection between a tenant and another entity or entities if the entity is an affiliate, or the entities are affiliates, within the meaning of s 328-130 of the Income Tax Assessment Act 1997 (Cth) of the tenant; and</p> <p>(b) \$50 million is the prescribed amount.</p>						
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OTHER RELEVANT DEFINITIONS

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p>s 12, VIC Act</p>	<p>Reg 3, NSW Regs</p>	<p>s 23(8), QLD Act</p>	<p>s 7(16), SA Act</p>	<p>s 3, WA Act</p>	<p>s 22, TAS Act</p>	<p>s 3(4), ACT Act</p>	<p>s 11A & 11B, NT Leases Act</p>
<p>Commercial licence means a licence, sub-licence, or agreement for a licence or sub-licence, whether or not in writing or partly in writing, and whether express or implied, under which a person has a right to occupy, non-exclusively, a part of premises for the sole or predominant purpose of carrying on a business at the occupied premises.</p> <p>Qualifies for the Jobkeeper scheme has the same meaning as in section 789GC of the Fair Work Act 2009 (Cth) (which section refers to the Jobkeeper payment rules).</p> <p>SME entity has the same meaning as in s 4 of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 (Cth) (which section refers to the applicable rules).</p> <p>Turnover means turnover that is prescribed <u>(Reg. 5, VIC Regs)</u> For the purposes of the definition of turnover in s 12 of the Act, the things set out in s 5(2) (a) to (g) of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020 (Cth) earned or received by an entity in the most recent financial year are prescribed as turnover.</p>	<p>Business means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services.</p> <p>Prescribed period means the period ending at the end of the day that is six months after the day on which this Regulation commences [24 October 2020].</p>	<p>Premises includes land.</p>	<p>Business means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services.</p> <p>Prescribed period means the period:</p> <p>(a) beginning on the day on which this section comes into operation; and</p> <p>(b) ending on the day on which this section expires under s 6.</p>	<p>Adopted code of conduct means a code of conduct adopted by regulations made under s 13.</p> <p>Emergency period means the period:</p> <p>(a) beginning on 30 March 2020;</p> <p>(b) ending on:</p> <p>(i) a day prescribed by regulations for the purposes of this paragraph; or</p> <p>(ii) if a day has not been prescribed for the purposes of this paragraph before 29 September 2020 – 29 September 2020.</p>	<p>COVID-19 emergency day means the day on which the COVID-19 Disease (Emergency Provisions) Act 2020 commences [27 March 2020].</p> <p>Emergency period means the period:</p> <p>(a) beginning on the COVID-19 emergency day; and</p> <p>(b) ending on whichever is the last occurring of the following:</p> <p>(i) the day 120 days after the COVID-19 emergency day;</p> <p>(ii) a day to which the emergency period is extended by one or more orders under s 3A(1);</p> <p>the day on which an order is made under s 3A(4) declaring that the emergency period has ended.</p>	<p>Minister means the Minister allocated responsibility for ACT Leases Act under the administrative arrangements under the Public Sector Management Act 1994.</p>	<p>COVID-19 public health emergency means:</p> <p>(a) the public health emergency initially declared by notice entitled “Declaration of Public Health Emergency” dated 18 March 2020 and published in Gazette S10 of 18 March 2020; and</p> <p>(b) if an extension of that declaration, or a subsequent declaration, is made – that public health emergency as extended or re-declared.</p> <p>EMA declaration means any of the following:</p> <p>(a) a declaration under s 18 of the Emergency Management Act 2013 that an emergency situation exists in relation to COVID-19;</p> <p>(b) a declaration of a state of emergency under s 19 of the Emergency Management Act 2013 in relation to COVID-19;</p> <p>a declaration of a state of disaster under s 21 of the Emergency Management Act 2013 in relation to COVID-19.</p> <p>Emergency period means:</p> <p>(a) while the COVID-19 public health emergency is declared under s 48 of the Public and Environmental Health Act 2011;</p> <p>(b) while an EMA declaration is in force.</p> <p>Modification notice means a notice of the Minister by Gazette notice, doing any or all of the following:</p>



								<ul style="list-style-type: none"> (a) suspending or modifying all or part of the NT Leases Act and regulations made under it; (b) making provisions to regulate the following: <ul style="list-style-type: none"> (i) a business premises or a business lease to which the Act applies; (ii) an arrangement (occupation arrangement) for the occupation of premises for business purposes that is an arrangement to which this Act, but for this section, does not apply.
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POWER TO MAKE REGULATIONS

Each of the States and Territories has passed legislation which empowers the making of regulations to give effect to the National Cabinet’s Mandatory Code of Conduct – SME Commercial Leasing Principles during COVID-19 and other matters, as follows:

- Victoria – s 15, VIC Act.
- New South Wales – by inserting amendments into the NSW RLA (Part 11) and the *Conveyancing (General) Regulation 2018* (NSW).
- Queensland – s 23, QLD Act.
- South Australia – s 19, SA Act.
- Western Australia – ss 13 and 22-24, WA Act.
- Tasmania – s 22, TAS Act.
- Australian Capital Territory – by inserting amendments into the ACT Leases Act (Part 17).
- Northern Territory – by inserting amendments into the NT Leases Act (Part 1A).



MODIFICATION OF LEASES & OTHER LAWS

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(s 17(1), VIC Act)</u> The following have effect subject to any regulations made under s 15 –</p> <p>(a) an eligible lease or any agreement relating to an eligible lease;</p> <p>(b) the Crown Land (Reserves) Act 1978, the Land Act 1958, the Retail Leases Act 2003, the Settled Land Act 1958 and the Transfer of Land Act 1958;</p> <p>(c) regulations made under the Crown Land (Reserves) Act 1978, the Land Act 1958, the Retail Leases Act 2003, the Settled Land Act 1958 and the Transfer of Land Act 1958;</p> <p>(d) the common law.</p> <p><u>(s 17(2), VIC Act)</u> To avoid doubt, any regulations made under s 15 that have retrospective effect to a particular day are taken always to have had effect on and after that day.</p>	<p><u>(Reg. 5, NSW Regs)</u> This Regulation applies to the exercise or enforcement of rights under a commercial lease in relation to circumstances occurring during the prescribed period.</p> <p><u>(Reg. 11, NSW Regs)</u> Nothing in this Regulation excludes the rules of equity and of common law from applying to the determination of a dispute concerning –</p> <p>(a) the recovery of possession of premises or land from a lessee, or</p> <p>(b) the termination of a commercial lease by a lessor, or</p> <p>(c) the exercise or enforcement of another right of a lessor of premises or land.</p>		<p><u>(s 7(2), SA Act)</u> The provisions of a commercial lease will be taken to be modified to the extent necessary to give effect to the operation of section 7 of the SA Act.</p>	<p><u>(s 6, WA Act)</u> The provisions of any lease or any other contract or agreement are taken to be modified to the extent necessary to give effect to the operation of the WA Act.</p> <p><u>(s 7(1), WA Act)</u> A lease or any other contract or agreement is of no effect to the extent that it purports to exclude or restrict the operation of this Act.</p> <p><u>(s 7(2), WA Act)</u> A purported waiver of a right, remedy or benefit conferred on a person under this Act is of no effect.</p>			<p><u>(s 11C(1), NT Leases Act)</u> A modification notice operates despite the provisions of a business lease or an occupation arrangement.</p> <p><u>(s11C(2), NT Leases Act)</u> A provision of a business lease or occupation arrangement is, for the period during which a modification notice is in force, set aside to the extent that the provision is inconsistent with a provision of the notice.</p> <p><u>(s11C(3), NT Leases Act)</u> A provision of an agreement or arrangement between the parties to a business lease or occupation arrangement is set aside to the extent that the provision would be set aside if it were in the lease or arrangement.</p>

COMPLIANCE WITH COVID-19 LAWS NOT A BREACH OF LEASE

For example, on 24 April 2020 the Deputy Chief Health Officer of Victoria directed that licenced premises and recreational facilities must not operate between midnight on 24 April 2020 and midnight on 11 May 2020: Restricted Activity Directions (No 5) (Vic)

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
	<p><u>(Reg. 6(5), NSW Regs)</u> An act or omission of a lessee required under a law of the Commonwealth or the State in response to the COVID-19 pandemic:</p> <p>(a) is taken not to amount to a breach of a commercial lease; and</p> <p>(b) does not constitute grounds for termination of the lease or the taking of any prescribed action by the lessor against the lessee.</p>		<p><u>(s 7(4), SA Act)</u> An act or omission of a lessee required under the laws of SA in response to the COVID-19 pandemic:</p> <p>(a) will be taken not to amount to a breach of the commercial lease; and</p> <p>(b) will not constitute grounds for termination of the lease or the taking of any prescribed action by the lessor against the lessee.</p>	<p><u>(s 10, WA Act)</u> An act or omission of a tenant during the emergency period that is required under a written law in response to the COVID-19 pandemic is not to be regarded as:</p> <p>(a) a breach of a small commercial lease; or</p> <p>(b) grounds for termination of a small commercial lease; or</p> <p>(c) grounds for the taking of any prohibited action under, or in respect of, a small commercial lease.</p>			



PROHIBITION ON TERMINATION, RE-ENTRY OR DRAWING DOWN SECURITY FOR FAILURE TO PAY RENT OR FAILURE TO TRADE DURING COVID-19 PANDEMIC

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 9(1), VIC Regs)</u> A tenant under an eligible lease is not in breach of the eligible lease if they do not pay the amount of rent required to be paid under the eligible lease during the relevant period and only if they –</p> <p>(a) comply with reg. 10(1) to (5) during the relevant period; or</p> <p>(b) during the relevant period, pay an amount of rent in accordance with:</p> <p>(i) any variation to the eligible lease mentioned in reg. 10(6)(a); or</p> <p>(ii) any other agreement mentioned in reg. 10(6)(b).</p> <p><u>(Reg. 9(2), VIC Regs)</u> A landlord under an eligible lease must not evict or attempt to evict a tenant under the eligible lease to whom reg. 9(1) applies. Penalty: 20 penalty units.</p> <p><u>(Reg. 9(3), VIC Regs)</u> A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease if the tenant under the eligible lease is a tenant to whom reg. 9(1) applies. Penalty: 20 penalty units.</p> <p><u>(Reg. 9(4), VIC Regs)</u> A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating to the non-payment of rent under an eligible lease by a tenant under the eligible lease if the tenant is a tenant to whom reg. 9(1) applies. Penalty: 20 penalty units.</p> <p><u>(Reg. 18(1), VIC Regs)</u> A tenant under an eligible lease is not in breach of the eligible lease if, during the relevant period, they:</p> <p>(a) reduce the opening hours of the business they carry out at the premises; or</p> <p>(b) close the premises and cease to carry out any business at the premises.</p> <p><u>(Reg. 18(2), VIC Regs)</u> A landlord under an eligible lease must not evict or attempt to evict a tenant</p>	<p><u>(Reg. 6(1), NSW Regs)</u> If a lessee is an impacted lessee, a lessor must not take any prescribed action against the lessee on the grounds of a breach of the commercial lease during the prescribed period consisting of –</p> <p>(a) a failure to pay rent; or</p> <p>(b) a failure to pay outgoings; or</p> <p>(c) the business operating under the lease not being open for business during the hours specified in the lease.</p> <p>Prescribed action means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court or tribunal for any of the following –</p> <p>(a) eviction of the lessee from premises or land the subject of the commercial lease;</p> <p>(b) exercising a right of re-entry to premises or land the subject of the commercial lease;</p> <p>(c) recovery of the premises or land;</p> <p>(d) distraint of goods;</p> <p>(e) forfeiture;</p> <p>(f) damages;</p> <p>(g) requiring a payment of interest on, or a fee or charge related to, unpaid rent otherwise payable by a lessee;</p> <p>(h) recovery of the whole or part of a security bond under the commercial lease;</p> <p>(i) performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease;</p> <p>(j) possession;</p> <p>(k) termination of the commercial lease,</p> <p>(l) any other remedy otherwise available to a lessor against a lessee at common law or under the law of NSW.</p> <p><u>(Reg. 6(6), NSW Regs)</u> Nothing in this clause prevents a lessor and lessee agreeing to the parties taking any action in relation to the commercial lease (including the lessor taking any prescribed action or the parties agreeing to terminate the commercial lease).</p> <p><u>(Reg. 10, NSW Regs)</u> Nothing in this Regulation prevents a lessor taking a prescribed action on</p>		<p><u>(s 7(3), SA Act)</u> If a lessee is suffering financial hardship as a result of the COVID-19 pandemic, a lessor cannot take any prescribed action against the lessee on the grounds of a breach of the lease during the prescribed period consisting of:</p> <p>(a) a failure to pay rent; or</p> <p>(b) a failure to pay outgoings; or</p> <p>(c) the business operating under the lease not being open for business during the hours specified in the lease; or</p> <p>(d) any other act or omission of a kind prescribed by the regulations for the purposes of s 7(3).</p> <p>Prescribed action means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court for any of the following:</p> <p>(a) eviction of the lessee from premises the subject of the commercial lease;</p> <p>(b) exercising a right of re-entry to premises the subject of the commercial lease;</p> <p>(c) recovery of land;</p> <p>(d) distraint of goods;</p> <p>(e) forfeiture;</p> <p>(f) damages;</p> <p>(g) requiring a payment of interest on unpaid rent otherwise payable by a lessee;</p> <p>(h) recovery of the whole or part of a security bond under the commercial lease;</p> <p>(i) performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease;</p> <p>(j) possession;</p> <p>(k) termination of the commercial lease;</p> <p>(l) any other remedy otherwise available to a lessor against a lessee at common law or under the law of SA.</p>	<p><u>(s 9, WA Act)</u> Except in the circumstances (if any) prescribed by regulations for the purposes of this section, a landlord cannot take prohibited action during the emergency period on the grounds of a breach by the tenant of a small commercial lease that occurs during the emergency period if the breach consists of:</p> <p>(a) a failure to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, a requirement under the lease to pay all or any of the landlord's operating expenses); or</p> <p>(b) the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease; or</p> <p>(c) any act or omission of a kind prescribed by regulations for the purposes of s 9.</p> <p>Prohibited action means an action under, or in respect of, a small commercial lease (including seeking orders, or commencing proceedings, in a court or tribunal) for any of the following –</p> <p>(a) eviction of the tenant from the land or premises that are the subject of the small commercial lease;</p> <p>(b) exercising a right of re-entry to the land or premises that are the subject of the small commercial lease;</p> <p>(c) possession;</p> <p>(d) recovery of land;</p> <p>(e) distraint of goods;</p> <p>(f) forfeiture;</p> <p>(g) termination of the small commercial lease;</p> <p>(h) damages;</p> <p>(i) requiring a payment of interest on unpaid rent or on any other unpaid amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, operating expenses);</p> <p>(j) recovery of the whole or part of any security for the performance of the tenant's obligations under the small commercial lease</p>			



<p>under the eligible lease to whom reg. 18(1) applies. Penalty: 20 penalty units.</p> <p><u>(Reg. 18(3), VIC Regs)</u> A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease if the tenant under the eligible lease is a tenant to whom reg. 18(1) applies. Penalty: 20 penalty units.</p> <p><u>Reg. 18(4), VIC Regs)</u> A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating to the non-payment of rent under an eligible lease by a tenant under the eligible lease if the tenant is a tenant to whom reg. 18(1) applies. Penalty: 20 penalty units.</p>	<p>grounds not related to the economic impacts of the COVID-19 pandemic.</p> <p>Note: for example, a lessor may terminate a commercial lease if the lessee has breached the lease by damaging the premises concerned or may take action if a lessee fails to vacate premises following the expiry of a fixed term commercial lease.</p> <p>See leasing principle No. 2 in the National Code of Conduct.</p>			<p>(including, without limitation, a security bond);</p> <p>(k) performance of obligations by the tenant or any other person under a guarantee given in respect of the small commercial lease (including, without limitation, making a demand on a bank guarantee);</p> <p>(l) any other remedy otherwise available to the landlord against the tenant at common law or under a written law.</p> <p><u>(s 15, WA Act)</u> Nothing in s 9 prevents a landlord from making a request to the Commissioner under s 18, or an application to the Tribunal under s 16, in relation to a financial hardship dispute.</p>			
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GOOD FAITH OBLIGATIONS & MISREPRESENTATION

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 8(2), VIC Regs)</u> A landlord and tenant under an eligible lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which these Regulations apply.</p>	<p><u>(Reg. 7(3), NSW Regs)</u> A party to a commercial lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the commercial lease.</p>						<p><u>(s 132F, NT Leases Act)</u> A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is a party to negotiations between a landlord and a tenant or is acting on behalf of such a party; and (b) the negotiations take place during the emergency period; and (c) the negotiations seek to adjust the terms of an arrangement for the occupation of premises for business purposes; and (d) the person intentionally or recklessly misrepresents the financial situation of the party in the course of the negotiations. <p>Maximum penalty: 200 penalty units or imprisonment for two years.</p>



RENT RELIEF

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 10(1), VIC Regs)</u> A tenant under an eligible lease may request rent relief from the landlord under the eligible lease.</p> <p><u>(Reg. 10(2), VIC Regs)</u> A request under 10(1) must be in writing and be accompanied by:</p> <p>(a) a statement by the tenant that the tenant’s lease is an eligible lease and the lease is not excluded from the operation of these Regulations under s 13(3) of the Act; and</p> <p>(b) information that evidences that the tenant:</p> <p>(i) is an SME entity; and</p> <p>(ii) qualifies for, and is a participant in, the JobKeeper scheme.</p> <p><u>(Reg. 10(3), VIC Regs)</u> On receipt of a tenant’s request under reg. 10(1) which conforms with reg. 10(2), a landlord must offer rent relief to the tenant under an eligible lease within –</p> <p>(a) 14 days after receiving that request; or</p> <p>(b) a different time frame as agreed between the landlord and the tenant in writing.</p> <p><u>(Reg. 10(4), VIC Regs)</u> A landlord’s offer of rent relief under reg. 10(3) must be based on all the circumstances of the eligible lease and –</p> <p>(a) relate to up to 100% of the rent payable under the eligible lease during the relevant period; and</p> <p>(b) provide that no less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless a landlord and a tenant otherwise agree in writing; and</p> <p>(c) apply to the relevant period; and</p> <p>(d) take into account –</p> <p>(i) the reduction in a tenant’s turnover associated with the premises during the relevant period; and</p> <p>(ii) any waiver given pursuant to reg. 14(2); and</p> <p>(iii) whether a failure to offer sufficient rent relief would compromise a tenant’s capacity to fulfil the tenant’s ongoing</p>	<p><u>(Reg. 7(1), NSW Regs)</u> A lessor under a commercial lease must not take or continue any prescribed action against an impacted lessee on grounds of a breach of the commercial lease consisting of a failure to pay rent during the prescribed period unless the lessor has complied with this clause.</p> <p><u>(Reg. 7(2), NSW Regs)</u> If an impacted lessee is a party to a commercial lease, any party to the lease may request the other parties to renegotiate the rent payable under, and other terms of, the commercial lease.</p> <p><u>(Reg. 7(3), NSW Regs)</u> A party to the commercial lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the commercial lease.</p> <p><u>(Reg. 7(4), NSW Regs)</u> The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to –</p> <p>(a) the economic impacts of the COVID-19 pandemic; and</p> <p>(b) the leasing principles set out in the National Code of Conduct.</p> <p><i>Note: See leasing principles No. 3-5, 7-10 and 12 in the National Code of Conduct.</i></p> <p><i>In particular, leasing principle No. 3 in the National Code of Conduct requires landlords to offer rent reductions, in the form of waivers or deferrals of rent, proportionate to lessees’ reductions in turnover.</i></p>						



<p>obligations under the eligible lease, including the payment of rent; and</p> <p>(iv) a landlord's financial ability to offer rent relief, including any relief provided to a landlord by any of its lenders as a response to the COVID-19 pandemic; and</p> <p>(v) any reduction to any outgoings charged, imposed or levied in relation to the premises.</p> <p><u>(Reg. 10(5), VIC Regs)</u> Following receipt of a landlord's offer by a tenant, the tenant and the landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the relevant period.</p> <p><u>(Reg. 10(6), VIC Regs)</u> Rent relief under this regulation may be given effect by the landlord and tenant by –</p> <p>(a) a variation to the eligible lease; or</p> <p>(b) any other agreement between them, that gives effect to the rent relief, either directly or indirectly.</p> <p><i>Note (2): If any part of the rent payable under an eligible lease has been waived under a variation to the eligible lease or under another agreement between the landlord and tenant that gives effect to the rent relief, either directly or indirectly, a landlord will be bound by that variation or agreement and will not be able to subsequently make any claim for payment of the waived part of the rent.</i></p>							
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PAYMENT OF DEFERRED RENT

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 16(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg. 16(2), VIC Regs)</u> If any rent is deferred by variation to the eligible lease or an agreement as mentioned under reg. 10(6) –</p> <p>(a) A landlord under the lease must not request payment of any part of the deferred rent until the earlier of:</p> <ul style="list-style-type: none"> (i) expiry of the relevant period; and (ii) expiry of the term of the eligible lease (before any extension as provided under reg. 13 or otherwise); and <p>(b) a landlord and a tenant must vary the eligible lease or otherwise agree so that the tenant must pay the deferred rent to the landlord amortised over the greater of –</p> <ul style="list-style-type: none"> (i) the balance of the term of the eligible lease, including any extension to that term, as provided under reg. 13 or otherwise; and (ii) a period of no less than 24 months. <p><u>(Reg. 16(3), VIC Regs)</u> The method by which the deferred rent is amortised for the purposes of reg. 16(2) is to be agreed to by the landlord and tenant.</p> <p><u>(Reg. 16(4), VIC Regs)</u> Reg. 16(2) does not apply if a landlord and a tenant agree otherwise in writing.</p>							

SUBSEQUENT RENT RELIEF – MATERIAL CHANGE IN A TENANT’S CIRCUMSTANCES

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 11(1), VIC Regs)</u> If the financial circumstances of a tenant under an eligible lease materially change after a variation to the eligible lease has been made or an agreement has been reached as mentioned in reg. 10(6) –</p> <p>(a) The tenant may make a further request to the landlord under that lease for rent relief under reg. 10; and</p> <p>(b) subject to reg. 11(2), the landlord and the tenant must follow the process set out in reg. 10 in relation to that request.</p> <p><u>(Reg. 11(2), VIC Regs)</u> A landlord’s offer of rent relief need not comply with reg. 10(4)(b) [that is, constitute at least a 50% waiver].</p>							

EXTENSION OF THE LEASE TERM

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg 13(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg 13(2), VIC Regs)</u> If the payment of any rent is deferred by variation of an eligible lease or an agreement mentioned under reg. 10(6), the landlord under the eligible lease must offer the tenant under the eligible lease an extension to the term of their eligible lease on the same terms and conditions that applied under the eligible lease before the commencement of these Regulations.</p> <p><u>(Reg 13(3), VIC Regs)</u> The extension offered under reg. 13(2) must be equivalent to the period for which rent is deferred, unless a landlord and a tenant agree in writing that this regulation does not apply to their eligible lease.</p>							



OUTGOINGS AND LAND TAX; REDUCTION OF SERVICES

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 14(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg. 14(2), VIC Regs)</u> A landlord under an eligible lease must consider waiving recovery of any outgoing or other expense payable by a tenant under the eligible lease for any part of the relevant period that the tenant is not able to operate their business from the premises.</p> <p><u>(Reg. 14(3), VIC Regs)</u> If a tenant under an eligible lease is not able to operate their business at the premises for any part of the relevant period, the landlord may cease to provide, or reduce provision of, any service at the premises –</p> <p>(a) a landlord under an eligible lease must not require a tenant under the lease to pay any amount in respect of that outgoing that is greater than a tenant’s proportional share of the reduced outgoing payable under the lease;</p> <p>(b) if a tenant under an eligible lease has already paid to a landlord under the lease an amount greater than a tenant’s proportional share of the reduced outgoing, the landlord must reimburse the excess amount to a tenant as soon as possible.</p> <p><u>(Reg. 15(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg. 15(2), VIC Regs)</u> If any outgoings charged, imposed or levied in relation to the premises are reduced –</p> <p>(a) a landlord under an eligible lease must not require a tenant under the lease to pay any amount in respect of that outgoing that is greater than a tenant’s proportional share of the reduced outgoing payable under the lease; and</p> <p>(b) if a tenant under an eligible lease has already paid to a landlord under the lease an amount greater than a tenant’s proportional share of the reduced outgoing, the landlord must reimburse the excess amount to the tenant as soon as possible.</p>	<p><u>(Reg. 7(1), NSW Regs)</u> A lessor under a commercial lease must not take or continue any prescribed action against an impacted lessee on grounds of a breach of the commercial lease consisting of a failure to pay rent during the prescribed period unless the lessor has complied with this clause.</p> <p><u>(Reg. 7(2), NSW Regs)</u> If an impacted lessee is a party to a commercial lease, any party to the lease may request the other parties to renegotiate the rent payable under, and other terms of, the commercial lease.</p> <p><u>(Reg. 7(3), NSW Regs)</u> A party to the commercial lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the commercial lease.</p> <p><u>(Reg. 7(4), NSW Regs)</u> The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to –</p> <p>(c) the economic impacts of the COVID-19 pandemic; and</p> <p>(d) the leasing principles set out in the National Code of Conduct.</p> <p><i>Note: See leasing principles No. 3-5, 7-10 and 12 in the National Code of Conduct.</i></p> <p><i>In particular, leasing principle No. 3 in the National Code of Conduct requires landlords to offer rent reductions, in the form of waivers or deferrals of rent, proportionate to lessees’ reductions in turnover.</i></p> <p><u>(Reg. 6(4), NSW Regs)</u> If an impacted lessee is required by a provision of a commercial lease to pay a fixed amount that represents an amount of land tax or any other statutory charge (such as local council rates) or insurance payable by a lessor and the amount of the land tax or other statutory charge or insurance payable is reduced, the impacted lessee is exempted from the operation of the provision to the extent of the reduction.</p> <p><i>Note: See leasing principle No. 6 in the National Code of Conduct.</i></p>		<p><u>(s 7(6), SA Act)</u> A lessor must not, during the prescribed period, require a lessee who is suffering financial hardship as a result of the COVID-19 pandemic to pay land tax or reimburse the lessor for the payment of land tax in respect of a commercial lease.</p> <p><u>(s 7(7), SA Act)</u> S 7(6) does not limited the operation of the terms of a commercial lease, or a provision of an Act, that otherwise prohibits the payment of land tax or reimbursement of land tax to a lessor by a lessee.</p>				



PROHIBITION ON RENT INCREASES

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 12(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg. 12(2), VIC Regs)</u> A landlord under an eligible lease must not increase the rent payable under the lease at any time during the relevant period, unless the landlord and the tenant under the eligible lease agree in writing that this regulation does not apply to their eligible lease.</p> <p><u>(Reg. 12(3), VIC Regs)</u> Reg. 12(2) does not apply to a retail lease to the extent that it provides for rent to be determined by reference to the volume of trade of a tenant's business.</p>	<p><u>(Reg. 6(2), NSW Regs)</u> If, during the prescribed period, a lessee under a commercial lease is an impacted lessee, the rent payable under the commercial lease (other than rent or a component or rent determined by reference to turnover) must not be increased.</p> <p><u>(Reg. 6(3), NSW Regs)</u> If, during the prescribed period, a lessee under a commercial lease was an impacted lessee, a lessor must not, after the prescribed period, take any prescribed action against the lessee on the grounds of a breach of the commercial lease consisting of a failure to pay an amount equivalent to or representing the rent increase amount referred to in reg. 6(2).</p>		<p><u>(s 7(5), SA Act)</u> Unless otherwise agreed between the lessee and the lessor, rent payable under a commercial lease (other than rent or a component of rent determined by reference to turnover) must not, if during the prescribed period the lessee is suffering financial hardship as a result of the COVID-19 pandemic, be increased.</p>	<p><u>(s 11, WA Act)</u> Rent payable under a small commercial lease (other than rent or a component of rent determined by reference to turnover) cannot be increased during the emergency period.</p>			

PROHIBITION ON FEES, INTEREST AND CHARGES

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg 17(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg 17(2), VIC Regs)</u> A landlord under the eligible lease must not require a tenant under the lease to pay interest or any other fee or charge in relation to any payment of rent deferred by variation to the eligible lease or an agreement mentioned under reg. 10(6).</p>							



TRANSITIONAL PROHIBITIONS

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
			<p><u>(s 7(12), SA Act)</u> If a lessee is suffering financial hardship as a result of the COVID-19 pandemic and during the relevant period –</p> <p>(a) a lessor has taken or commenced, but not yet completed or finalised, a prescribed action (including a prescribed action that has a periodic or ongoing effect); or</p> <p>(b) a lessor has taken or commenced, but not yet completed or finalised, the performance of any other measure (including a measure that has a periodic or ongoing effect) that the lessor would not have been able to undertake or commence during the prescribed period by virtue of the operation of this section; or</p> <p>(c) the operation of the terms of a commercial lease has had effect, or has a periodic or ongoing effect, contrary to the operation of this section,</p> <p>the action, operation or effect will, insofar as it remains incomplete or ongoing, or has a periodic or ongoing effect, be taken to be stayed or suspended until the end of the prescribed period.</p> <p><u>(s 7(14), SA Act)</u> Relevant period means the period –</p> <p>(a) beginning on the day on which this section commences [30 March 2020]; and</p> <p>(b) ending on the day on which this Act is assented to by the Governor [9 April 2020].</p> <p><u>(s 7(13), SA Act)</u> The Magistrates Court may, on application by a party to a commercial lease –</p> <p>(a) make such orders as it thinks appropriate in the circumstances to mitigate the effect of an action or effect of a matter referred to in s 7(12), insofar as it has been completed or implemented in whole or in part during the relevant period, on grounds that the lessee has suffered financial hardship as a result of the COVID-19 pandemic; and</p> <p>(b) may make such other orders as it thinks fit.</p>	<p><u>(s 12(1), WA Act)</u> Relevant period means the period –</p> <p>(a) beginning on 30 March 2020; and</p> <p>(b) ending on the day on which this Act receives the Royal Assent [24 April 2020].</p> <p><u>(s 12(2), WA Act)</u> This section applies if, during the relevant period –</p> <p>(a) a landlord has taken or commenced prohibited action (including a prohibited action that has a periodic or ongoing effect); or</p> <p>(b) a landlord has taken or commenced the performance of any other measure (including a measure that has a periodic or ongoing effect) that the landlord would not have been able to undertake or commence during the emergency period by virtue of the operation of this Part; or</p> <p>(c) the operation of the terms of a small commercial lease has had effect, or has a periodic or ongoing effect, contrary to the operation of this Part; or</p> <p>(d) without limiting paragraphs (a) to (c), rent payable under a small commercial lease has been increased contrary to the operation of this Part.</p> <p><u>(s 12(3), WA Act)</u> The prohibited action or other measure is as valid and effective as it would have been had this Part not come into operation but, so far as the prohibited action or other measure remains incomplete or ongoing, or has a periodic or ongoing effect, it is taken to be stayed or suspended until the end of the emergency period.</p> <p><u>(s 12(4), WA Act)</u> The effect of the operation of the terms of the small commercial lease is as valid and effective as it would have been had this Part not come into operation but, so far as the effect of the operation of those terms remains incomplete or ongoing, or has a periodic or ongoing effect, it is taken to be stayed or suspended until the end of the emergency period.</p> <p><u>(s 12(5), WA Act)</u> The increase in rent is as valid and effective as it would have been had this Part not come into operation but the increase is taken to be stayed or suspended until the end of the emergency period.</p>			



CONFIDENTIALITY OF INFORMATION

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg 19(1), VIC Regs)</u> An eligible lease is taken to provide as set out in this regulation.</p> <p><u>(Reg 19(2), VIC Regs)</u> A landlord or tenant under an eligible lease must not divulge or communicate protected information obtained under or in connection with the operation of these Regulations except –</p> <ul style="list-style-type: none"> (a) with the consent of the person to whom the information relates; or (b) to a professional adviser who agrees to keep it confidential; or (c) to an actual or prospective financier who agrees to keep it confidential; or (d) as authorised by the Small Business Commission; or (e) as authorised under law; or (f) for the purposes of any proceeding in a court or tribunal. <p><u>(Reg 19(3), VIC Regs)</u> In this regulation: Personal information means the name, address and contact details of any person (other than the landlord or tenant). Protected information means:</p> <ul style="list-style-type: none"> (a) personal information; or (b) information relating to business processes or financial information (including information about the trade of a business). <p><u>(Reg 24(1), VIC Regs)</u> A landlord under an eligible lease may give the statement and information under reg. 10(2) given to the landlord by a tenant under the lease to the Commissioner of State Revenue for the purpose of applying to be eligible for a tax relief measure in relation to any tax paid or required to be paid by the landlord in relation to the premises.</p> <p><u>(Reg 24(2), VIC Regs)</u> In this regulation, tax relief measure has the same meaning as in Part 9A of the Taxation Administration Act 1997.</p>			<p><u>(s 7(15), SA Act)</u> A person must not divulge or communicate personal information, information relating to business processes or financial information (including information about the turnover of a business) obtained in connection with the operation of this section except:</p> <ul style="list-style-type: none"> (a) with the consent of the person to whom the information relates; or (b) in connection with the administration of this section; or (c) as authorised by the Commissioner; or (d) for the purposes of legal proceedings; or (e) to a police officer or a law enforcement officer of another State, a Territory of the Commonwealth or of the Commonwealth. 				<p><u>(s 132G(1), NT Leases Act)</u> A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person is a party to negotiations between a landlord and a tenant or is acting on behalf of such a party; and (b) the negotiations take place during the emergency period; and (c) the negotiations seek to adjust the terms of an arrangement for the occupation of premises for business purposes; and (d) the person intentionally or recklessly discloses information about the other party's financial situation that was obtained in the course of the negotiations. <p>Maximum penalty: 500 penalty units or imprisonment for five years.</p> <p><u>(s 132G(2), NT Leases Act)</u> A person does not commit an offence against s 132G(1) if:</p> <ul style="list-style-type: none"> (a) the disclosure is: <ul style="list-style-type: none"> (i) necessary for the administration of this Act; or (ii) for a legal proceeding; or (iii) for obtaining legal advice from a legal practitioner; or (iv) to report suspected illegal conduct to a government organisation with responsibility for investigating that kind of illegal conduct; or (v) with the consent of the other party; or (b) the person has knowledge of the information independently from obtaining the information in the course of the negotiations. <p><u>(s 132G(3), NT Leases Act)</u> For s 132G(1), it is immaterial whether the disclosure was made during, or after, the emergency period.</p>



DISPUTE RESOLUTION – GENERAL PROVISIONS

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
	<p><u>(Reg. 8(2), NSW Regs)</u> In this clause, impacted commercial lease dispute means any dispute concerning the liabilities or obligations (including any obligation to pay money) under a commercial lease to which an impacted lessee is a party, being liabilities or obligations which arose under the commercial lease concerning circumstances occurring during the prescribed period and includes a dispute regarding a renegotiation (or failure to take part in a renegotiation) of rent payable under the commercial lease under reg. 7.</p>			<p><u>(s 14(1), WA Act)</u> In this Part – Code of conduct dispute means a dispute that arises out of, or in relation to, the application of the adopted code of conduct in relation to a lease (including, without limitation, a dispute about the waiver or deferral of rent payable under a lease). Commissioner has the meaning given in the Small Business Development Corporation Act 1983, s 3(1). Dispute: (a) means a dispute between the parties to a lease, or 1 or more parties to a lease and a person who has given a guarantee in respect of the lease, that arises out of, or in relation to, the operation of this Act; and (b) includes a code of conduct dispute and a financial hardship dispute. Financial hardship, in relation to a tenant, means financial hardship suffered by the tenant as a result of 1 or more of the following: (a) a restriction imposed under a written law in response to the COVID-19 pandemic; (b) changes in societal behaviour in response to the COVID-19 pandemic; (c) any other consequences of the COVID-19 pandemic. Party, in relation to a lease, means the landlord or the tenant under the lease. Tribunal means the State Administrative Tribunal. <u>(s 14(2), WA Act)</u> For the purposes of this Part, a financial hardship dispute is a dispute between the parties to a small commercial lease in the following situation – (a) during the emergency period, the tenant has breached the small commercial lease by failing to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, a requirement under the lease to pay all or any of the landlord’s operation expenses); and (b) the landlord claims that the breach was not a result of the tenant suffering financial hardship; and</p>			



				(c) the landlord has not granted the tenant a waiver, deferred or reduction in respect of the unpaid rent or other unpaid amount of money.			
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DISPUTE RESOLUTION – MEDIATION & ALTERNATIVE DISPUTE RESOLUTION

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 20(1), VIC Regs)</u> A landlord or a tenant under an eligible lease may refer a dispute about the terms of the eligible lease arising in relation to a matter to which these Regulations apply (an eligible lease dispute) to the Small Business Commission (SBC) for mediation.</p> <p><u>(Reg. 20(2), VIC Regs)</u> A referral under reg. 20(1) must be in writing.</p> <p><u>(Reg. 20(3), VIC Regs)</u> The SBC may, in relation to an eligible lease dispute, perform or exercise any of the functions or powers that the Commission has under the applicable mediation provisions in relation to the eligible lease dispute, and for that purpose, the applicable mediation provisions apply in relation to the eligible lease dispute as if –</p> <p>(a) a reference in the applicable mediation provisions to a retail tenancy dispute were a reference to an eligible lease dispute; and</p> <p>(b) a reference in the applicable mediation provisions to a retail premises lease were a reference to an eligible lease; and</p> <p>(c) a reference in the applicable mediation provisions to a retail premises were a reference to the premises.</p> <p><u>(Reg. 20(4), VIC Regs)</u> Mediation under this section is not limited to formal mediation procedures. Mediation extends to preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that –</p> <p>(a) the landlord and the tenant are fully aware of their rights and obligations; and</p> <p>(b) there is full and open communication between the landlord and the tenant concerning the matter.</p> <p><u>(Reg. 20(5), VIC Regs)</u></p>	<p><u>(Reg. 8(1), NSW Regs)</u> To avoid doubt, Part 8 (Dispute resolution) of the NSW RLA extends to an impacted commercial lease dispute as if it were a retail tenancy dispute within the meaning of that Part.</p>		<p><u>(s 7(8), SA Act)</u> A party to a commercial lease may apply to the Commissioner for 1 or both of the following:</p> <p>(a) mediation of a dispute in relation to whether or not, for the purposes of this section, a lessee is suffering financial hardship as a result of the COVID-19 pandemic;</p> <p>(b) a determination as to whether or not a lessee is suffering financial hardship as a result of the COVID-19 pandemic.</p> <p><u>(s 7(10), SA Act)</u> In addition to the provisions of s 7(8), a party to a commercial lease may apply to the Commissioner for mediation of any other dispute in relation to issues that have arisen in relation to the COVID-19 pandemic –</p> <p>(a) arising from, or related to, the operation of this section; or</p> <p>(b) arising from, or related to, the commercial lease; or</p> <p>(c) related to any other matter relevant to the occupation of the premises or to a business conducted at the premises the subject of the commercial lease.</p> <p><u>(s 7(11), SA Act)</u> The Commissioner may, in exercising any functions or powers under this section in relation to a matter, exercise any of the powers or functions the Commissioner is able to exercise under Part 7 of the Fair Trading Act 1987 in relation to that matter.</p>	<p><u>(s 18(1), WA Act)</u> This section applies to a dispute if:</p> <p>(a) the lease to which the dispute relates is a small commercial lease; or</p> <p>(b) the landlord under the lease to which the dispute relates owns or operates a small business and the lease is granted in the course of that business.</p> <p><u>(s 18(2), WA Act)</u> A party to a dispute may, under this Act, request the Commissioner to –</p> <p>(a) provide assistance to attempt to resolve the dispute under the Small Business Development Corporation Act 1983 s 15C; or</p> <p>(b) undertake alternative dispute resolution in respect of the dispute under the Small Business Development Corporation Act 1983 s 15E.</p> <p><u>(s 18(3), WA Act)</u> The request must be made during the emergency period.</p> <p><u>(s 18(4), WA Act)</u> It is a function of the Commissioner to provide assistance to attempt to resolve disputes to which this section applies.</p> <p><u>(s19(1), WA Act)</u> If a request is made to the Commissioner under s 18 in relation to a dispute, the Commissioner must, on the request of a party to the dispute, issue a certificate to that person if the Commissioner is satisfied that –</p> <p>(a) the dispute is unlikely to be resolved with the assistance of alternative dispute resolution; or</p> <p>(b) it would not be reasonable in the circumstances to commence an alternative dispute resolution proceeding in respect of the dispute; or</p>			<p><u>(s 132C(1), NT Leases Act)</u> Despite s 132B(1), if the Local Court is satisfied that the parties prefer to arrange their own mediation or conciliation without involving NTCAT, and that such a course is appropriate, the Local Court may adjourn the hearing of an application to allow the mediation or conciliation to take place.</p> <p><u>(s 132C(2), NT Leases Act)</u> A mediator or conciliator engaged by the parties as mentioned in s 132C(1) must advise the Local Court:</p> <p>(a) of the date that the mediation or conciliation concluded; and</p> <p>(b) whether the mediation was successful or unsuccessful.</p> <p><u>(s 132C(3), NT Leases Act)</u> If mediation or conciliation in accordance with this section is successful, the application for a warrant of possession is taken to be withdrawn.</p> <p><u>(s 132D, NT Leases Act)</u> NTCAT must notify the Local Court if the parties agree to a settlement in alternative dispute resolution before NTCAT, and the application for a warrant of possession is taken to be withdrawn.</p> <p><u>(s 132E(1), NT Leases Act)</u> NTCAT must advise the Local Court that a resolution has not been achieved if:</p> <p>(a) NTCAT is satisfied that the applicant has participated in good faith in alternative dispute resolution before NTCAT, but a settlement could not be reached; or</p> <p>(b) a settlement is not reached within 60 days after the Local Court referred the matter to NTCAT under s 132B.</p> <p><u>(s 132E(2), NT Leases Act)</u> If the Local Court is considering the matter of costs in a proceeding, the</p>



<p>In referring a dispute under reg. 20(1), the parties must not use mediation to prolong or frustrate reaching an agreement.</p> <p><u>(Reg. 20(6), VIC Regs)</u> In this regulation – Applicable mediation provisions means the following provisions under the Retail Leases Act 2003, to the extent that they apply to the conduct of a mediation – (a) s 84(2), (3) and (4); (b) Division 3 of Part 10.</p> <p><u>(Reg 21(1), VIC Regs)</u> A landlord or tenant may be represented by a legal practitioner in a mediation of an eligible dispute under reg. 20.</p> <p><u>(Reg 21(2), VIC Regs)</u> However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the other party) without their legal practitioners who represent them being present.</p>				<p>(c) alternative dispute resolution has failed to resolve the dispute.</p> <p><u>(s 19(2), WA Act)</u> The certificate is to be in a form approved by the Commissioner and may include any information about the conduct of the parties to the dispute that the Commissioner considers appropriate in the circumstances.</p> <p><u>(s 20, WA Act)</u> The Commissioner may, at any time, intervene in proceedings of the Tribunal in relation to a dispute to which s 18 applies.</p> <p><u>(s 21, WA Act)</u> Nothing in this Part prevents a dispute from being dealt with through a compulsory conference or mediation process under the State Administrative Tribunal Act 2004.</p>			<p>court may request from NTCAT a report on the conduct of the parties in alternative dispute resolution proceedings before NTCAT.</p>
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DISPUTE RESOLUTION – COURTS & TRIBUNALS

Victoria	New South Wales	Queensland	South Australia	Western Australia	Tasmania	Aust. Capital Territory	Northern Territory
<p><u>(Reg. 22(1), VIC Regs)</u> Subject to reg. 23, Division 4 of Part 10 of the Retail Leases Act 2003 (other than s 89(4)) applies to an eligible lease dispute referred to the SBC under these Regulations as if –</p> <p>(a) A reference in that Division to a retail tenancy dispute were a reference to an eligible lease dispute; and</p> <p>(b) A reference in that Division to a retail premises lease were a reference to an eligible lease.</p> <p><u>(Reg. 22(2), VIC Regs)</u> In making an order in a proceeding relating to an eligible lease dispute, VCAT must also have regard to –</p> <p>(a) the matters set out in reg. 10(4)(d); and</p> <p>(b) any certificate issued by the SBC under reg. 23(1) that mediation under this Part has failed, or is unlikely to resolve the dispute.</p> <p><u>(Reg. 23(1), VIC Regs)</u> An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the SBC has certified in writing that mediation under Division 1 has failed, or is unlikely to resolve the dispute.</p> <p><u>(Reg. 23(2), VIC Regs)</u> An eligible lease dispute may only be the subject of a proceeding in the Supreme Court if –</p> <p>(a) the SBC has certified in writing that mediation has failed, or is unlikely to resolve the dispute; or</p> <p>(b) the landlord or tenant, as the case requires, has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute.</p> <p><u>(Reg. 22(3), VIC Regs)</u> Regs. 22(1) and (2) do not:</p> <p>(a) apply to a proceeding for an order in the nature of an injunction; or</p> <p>(b) affect the validity of any decision made by VCAT or a court.</p> <p><u>(Reg. 22(4), VIC Regs)</u> To avoid doubt, nothing in this Part prevents a dispute from being dealt with through a compulsory conference, mediation or any other</p>	<p><u>(Reg. 9, NSW Regs)</u> The Tribunal and any court, when considering whether to make a decision or order relating to any of the following, is to have regard to the leasing principles set out in the National Code of Conduct –</p> <p>(a) the recovery of possession of premises or land from a lessee,</p> <p>(b) the termination of a commercial lease by a lessor,</p> <p>(c) the exercise or enforcement of another right of a lessor of premises or land.</p>		<p><u>(s 7(9), SA Act)</u> A right of appeal lies to the Magistrates Court against a determination of the Commissioner under s 7(8)(b).</p>	<p><u>(s 16(1), WA Act)</u> A party to a dispute may apply to the Tribunal to have the dispute determined by the Tribunal.</p> <p><u>(s 16(2), WA Act)</u> The application must be made during the emergency period unless the Commissioner has issued a certificate under s 19 in respect of the dispute.</p> <p><u>(s 16(3), WA Act)</u> S 16(4) applies if the lease to which the dispute relates:</p> <p>(a) is a small commercial lease; or</p> <p>(b) the landlord under the lease owns or operates a small business and the lease is granted in the course of that business.</p> <p><u>(s 16(4), WA Act)</u> An application in respect of the dispute cannot be made to the Tribunal under s16(1) unless –</p> <p>(a) none of the parties to the dispute has made a request to the Commissioner under s 18 in respect of the dispute and the parties agree that the application can be made; or</p> <p>(b) the Commissioner has issued a certificate under s 19 in respect of the dispute.</p> <p><u>(s 16(5), WA Act)</u> S 16(4) does not apply to a dispute that is of a class prescribed by regulations for the purposes of this subsection.</p> <p><u>(s 16(6), WA Act)</u> A copy of an application under s 16(1) that is required to be given under the State Administrative Tribunal Act 2004 s 45(1) must be given in the manner and time (if any) prescribed by regulations for the purposes of this subsection.</p> <p><u>(s 16(7), WA Act)</u> Nothing in this section prevents a person making a request to the Commissioner under s 18.</p> <p><u>(s 17(1), WA Act)</u> In this section, specified, in relation to an order, means specified in the order.</p> <p><u>(s 17(2), WA Act)</u> Without limiting any power to make an order that is conferred by the State</p>			<p><u>(s 105(1), NT Leases Act)</u> The Local Court has jurisdiction to hear and determine retail tenancy claims in respect of any disputed matter.</p> <p>Note: s 12 of the Local Court Act 2015 sets the jurisdictional limit of the Local Court’s civil jurisdiction at \$250,000.</p> <p><u>(s 105(2), NT Leases Act)</u> The Supreme Court has jurisdiction to hear and determine retail tenancy claims that relate to a monetary amount in excess of \$200,000.</p> <p><u>(s 132A, NT Leases Act)</u> This Division applies if, during the emergency period, an application is made to the Local Court for a warrant of possession of business premises.</p> <p><u>(s 132B(1), NT Leases Act)</u> Before hearing and determining the application, the Local Court must refer the matter to NTCAT for alternative dispute resolution.</p> <p><u>(s 132B(2), NT Leases Act)</u> Despite s 132B(1), if the Local Court is satisfied there are exceptional circumstances, the Local Court may proceed to hear and determine the application without referring the matter to NTCAT.</p> <p><u>(s 132B(3), NT Leases Act)</u> NTCAT must deal with a matter referred to it in accordance with subsection (1) under Part 4, Division 4 of the Northern Territory Civil and Administrative Tribunal Act 2014 as if the matter were a proceeding in NTCAT’s original jurisdiction.</p>



<p>alternative dispute resolution process under –</p> <ul style="list-style-type: none"> (a) the Civil Procedure Act 2010; or (b) rules of court made by the Supreme Court or any practice direction applying a proceeding in that court; or (c) rules of court made by the County Court or any practice direction applying to a proceeding in that court; or (d) rules of court made by the Magistrates’ Court or any practice direction applying to a proceeding in that court; or (e) rules within the meaning of the VCAT Act 1998 and any practice direction applying to a proceeding in the Tribunal. 				<p>Administrative Tribunal Act 2004, in proceedings under this Act the Tribunal may make any order that it considers appropriate to resolve the dispute or proceedings.</p> <p><u>(s17(3), WA Act)</u></p> <p>Without limitation, the orders that can be made by the Tribunal include the following –</p> <ul style="list-style-type: none"> (a) an order that requires a party to the proceedings to pay money to a specified person; (b) an order for a party to the proceedings to do, or refrain from doing, any specified thing; (c) if the proceedings relate to a code of conduct dispute – any order that the Tribunal considers appropriate to give effect to the approved code of conduct including, without limited, 1 or both of the following – <ul style="list-style-type: none"> (i) an order that a specified amount of rent payable under the lease to which the dispute relates be waived for a specified period; (ii) an order that a specified amount of rent payable under the lease to which the dispute relates be deferred and paid in a specified timeframe; (d) if the proceedings relate to a financial hardship dispute – an order terminating the small commercial lease; (e) an order dismissing the proceeding; (f) any ancillary order that the Tribunal considers necessary for the purpose of enabling an order under this section to have full effect. <p><u>(s 17(4), WA Act)</u></p> <p>In making an order in proceedings under this Act relating to a code of conduct dispute, the Tribunal must have regard to –</p> <ul style="list-style-type: none"> (a) the financial impact of the COVID-19 pandemic on the tenant’s business and capacity to meet the tenant’s obligations under the lease; and (b) the landlord’s financial capacity; and (c) the principles of proportionality and fairness, and any other relevant principles, set out in the adopted code of conduct. <p><u>(s 17(5), WA Act)</u></p>			
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				<p>In proceedings relating to a financial hardship dispute, the Tribunal –</p> <ul style="list-style-type: none"> (a) cannot make an order under s 17(3)(d), or any other order to the disadvantage of the tenant, unless satisfied that the tenant’s breach was not a result of the tenant suffering financial hardship; and (b) must make an order under s 17(3)(e) if satisfied that the tenant’s breach was a result of the tenant suffering financial hardship. <p><u>(s 17(6), WA Act)</u> In making an order in any proceedings under this Act, including an order under the State Administrative Tribunal Act 2004 s 87(2), the Tribunal may have regard to a certificate issued under s 19 that relates to the proceedings.</p> <p><u>(s 17(7), WA Act)</u> An order of the Tribunal requiring anything to be done or discontinued may fix the time within which that thing is to be done or discontinued, as the case may be.</p> <p><u>(s 17(8), WA Act)</u> In proceedings under this Act, the Tribunal may allow any equitable claim or defence, or give any equitable remedy, that the Supreme Court may allow or give.</p>			
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