

## Code of Conduct: Landlord Considerations

How to reach a fair rental relief agreement with your tenant



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To reach a fair and sustainable agreement that will see your tenant and their lease through the COVID-19 pandemic, we recommend that you consider the following:

- All communications should be clearly stated to be made “without prejudice” and confidential as between you and your tenant;
- You should ensure that your tenant addresses any rental arrears that existed prior to the COVID-19 pandemic;
- You should request from your tenant sufficient and accurate information to ascertain whether they have suffered any financial hardship due to the COVID-19 pandemic. This should include BAS Statements and other information generated from an accounting system and information provided to and/or received from a financial institution;
- In determining a proportionate rental relief arrangement, you may request from the tenant information regarding:
  - their turnover for the COVID-19 pandemic period and their turnover for a comparable period in the previous financial year;
  - evidence of a reduction in cashflow and profitability; and
  - evidence of limited financial support from other institutions or agencies (eg. insurance companies, financial institutions, and government departments).
- You may want to restrict the period of rental relief provided to the tenant with an agreement to revisit or renew arrangements thereafter as required;
- You should consider the benefits or otherwise of extending the term of a lease to cover the period rent relief is given;
- You will need to consider the effect of rent relief on rent reviews under the lease, including the exclusion of any rental relief received from consideration in a subsequent market rent review;

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- Once you have determined how rent relief will be provided, the following should be carefully considered:
  - Whether you will require the tenant to continue paying outgoings. You are not required to provide relief in relation to outgoings under the Code of Conduct;
  - Whether the rental relief will be by way of a waiver or a waiver plus a deferral. If the rental relief includes a deferral, when will it have to be repaid and will you charge interest;
  - When will the rental relief arrangement end, and what factors (if any) will you consider when assessing when to end the arrangement; and
  - Whether the existing lease will be extended for the period that the rent relief was given and if so, whether the terms and conditions of the existing lease will remain or whether the existing lease will end and a new lease will commence with different terms and conditions. You will need to consider the requirements under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA) if the lease is a retail lease; and
  - What current and/or additional security you have or may require from a tenant. For example, when does the bank guarantee expire, and does the tenant have capacity to provide additional security if the lease is to be extended.
- You should document the rental relief arrangement in writing in a deed of variation or a similar document;
- Both you and the tenant should review the rental relief arrangement regularly; and
- All financial and trading information must be kept confidential.

It will be important that you work with your tenant to reach an agreement that is balanced and sustainable during the COVID-19 pandemic and for a reasonable period afterwards. The focus should be on helping your tenant to continue their business so that you retain the tenant for when the COVID-19 pandemic ends and economic activity returns to a level approaching normal.

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