

NEWS ALERT 06.10.20

EXTENDING COMMERCIAL LEASE RENT RELIEF –

what do you need to know now?

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Mandatory rent relief for commercial leases has been extended across a few States of Australia with some introducing additional amendments to tighten up calculation of the minimum relief a landlord must provide.

Here, partner Kristy Dorney provides a practical snapshot of the changes implemented so far.

VICTORIA

- Tenants can now apply for rent relief for the extended period 29 March to 31 December 2020 (previously it ended 29 September 2020).
- The obligation to waive at least 50 percent of the relief offered continues through to the extended period.
- The amendments prescribe in more detail the information and calculations tenants are required to provide up front in support of their application, including providing a statement setting out the decline in turnover associated with the premises (and no other premises) in accordance with section 8 of the JobKeeper Rules and information evidencing that decline.

- Significantly, the amendments set a minimum rent relief expectation based on an assessment of the tenant's decline in turnover generated from the premises (and no other premises), not the decline in turnover of its business as a whole.
- Tenants who have already agreed rent reductions based on their overall business decline (which may have included multiple premises) can apply for an adjustment of their agreement to the extent it relates to rent payable during the extended period (and only from the date the tenant makes its application). For tenants who have not yet reached agreement on their relief, the relief must be in proportion with the decline in turnover at the premises.
- The tenant's decline in turnover across its whole business (including all premises) is still relevant in determining whether it qualifies for JobKeeper. It is only at the point of calculating the relief that the decline is to be assessed at the premises level.
- The tenant does not have to start paying back deferred rent until 1 January 2020 (previously it was the earlier of 29 September or lease expiry). However, if an agreement has already been reached in writing to start repayments earlier than that agreement will still apply.

QUEENSLAND

- Tenants can now apply for rent relief for the extended period 29 March to 31 December 2020 (previously it ended 30 September 2020).
- The obligation to waive at least 50 percent of the relief offered does not apply for the extended period.
- If a landlord gave rent relief for the extended period as part of an earlier agreement, that relief is to be recognised in any new relief application by the tenant. Although this is not expressly stated in other states, we consider relief already agreed would be a relevant consideration in those states too.

Our Real Estate and Commercial Disputes lawyers can help you understand the requirements and what these extensions to the rent relief measures mean for you.

- The tenant does not have to start paying back rent deferred during the extended period until 1 January 2021. However, for rent deferred during the original response period, the date remains 1 October 2020.
- The obligation to offer an extension of the lease for any period rent is waived or deferred will include up to a further three months if relief is given during the extension period.

OTHER STATES AND TERRITORIES

- The New South Wales Government has announced an extended period will be implemented from 24 April to 31 December 2020 (previously it ended 24 October 2020). However, regulations have not yet been released.
- South Australia has extended its scheme until 3 January 2021 and Western Australia until 28 March 2021 while Tasmania, Northern Territory and the ACT have not implemented any extensions.

WHAT SHOULD YOU DO NOW?

These extensions mean landlords and tenants need to ensure they understand questions such as:

- Is relief already given relevant when negotiating relief for the extended term?
- What financial information is relevant in calculating relief?
- How long must landlords provide rent relief?
- What should you do if you cannot reach an agreement?
- When does deferred rent need to be paid back?
- How do the changes impact relief requests still being negotiated?

For more background information please **click here** for our recent article.

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