

Commercial Tenancies and Covid 19 - Resource Guide

Last update: Saturday 11 April 2020

This resource guide has been crafted to assist all the parties in a commercial tenancy to understand the issues that Covid19 is presenting to both parties in the tenancy relationship.

This is not a promotional publication and we have left out sale-pitch-speak on purpose. The Commercial Guys are real people, we are tenants and we are property owners ourselves; our friends and family are in business and we have heard from some very scared and worried people over the last few weeks. We want ALL tenants and landlords to work together to find a way through this so that we can all give each other the best opportunity to survive.

All the stuff - none of the fluff

In a rapidly changing environment, with a plethora of commentary and news stories about commercial tenants, the rent and the businesses within them, confusion about rights and obligations reigns and there is fear from both commercial tenants and landlords about what the coming days, weeks and months will bring.

We have cut through that confusion to direct you to **resources from industry experts** that help you have a better idea of what is really taking place.

While some are writing articles pitched at either a landlord or tenant, we believe now is the time for **complete transparency between all stakeholders**, which requires that all information be made available in the one place so that each party to the relationship can see what the other is being told. It's not just commercial tenants that might face financial ruin: we have spoken with landlords who have lost their jobs and are now also faced with a tenant that is no longer trading or unable to pay some or all the rent. Many landlords are small business owners themselves trying to attend to their own Covid19 issues at the same time.

One thing is for sure - everyone wants to successfully navigate a way through this so that we can all get back to what we each do best on the other side.

[Adam Leishman](#) and [Grant Simpson](#)

Co-Founders of The Commercial Guys



Commercial Tenants

Let's start with commercial tenants and how they are being affected

Is everyone being affected?

While Covid19 is likely to affect all businesses one way or another, at this stage there are businesses ranging from being shut down to those thriving from panic buying. There are also many businesses that have not yet seen an impact.

Restrictions have been placed on the following activities:

<https://business.gov.au/risk-management/emergency-management/coronavirus-information-and-support-for-business/restrictions-on-non-essential-services>

Those that are reporting downturn

Apart from the business types on the restricted list the following types have also reported downturn: Retail (homeware and fashion) - Construction and Trades - Printers - Office Supplies - Uniforms - Detailers - Caravan industry - Laundry - Dental - Florists - Importers - Mechanical - Conveyancing - Childcare

Those that report upturn or temporary spike

Chemists - Pharmacies - Groceries - Butchers - Fruit and Veg - IT

Rent Relief Requests

What are we hearing from Commercial Tenants

Tenants range from sole traders right through to national chains and franchises and while, many are seeing a downward revenue trend (or have been forced to close), some are seeing increases and even massive spikes in demand.

We are seeing quite several tenants reaching out for information regarding rent relief.

The incoming requests can be categorised into the following:

1. General enquiry about what assistance a landlord might be able to provide
2. Asking for a percentage of rent to be reduced for a few months
3. Asking for a deferment of the rent due until a later date
4. Asking for a major reduction of rent for a few months
5. Asking for rent to be completely waived for 1-3 months
6. Advising they have closed and will not be paying any further rent.



Our principal, [Adam Leishman](#), is a member of the Commercial and Industrial Chapter of the REIQ and had a Zoom hook up with fellow chapter members and agency principals to speak about each of their agency's observations. It was very clear that the above requests are happening at all agencies and to landlords direct as well.

Some of the news stories that commercial tenants are hearing are:

<https://www.abc.net.au/life/coronavirus-covid-19-why-some-landlords-are-helping-tenants/12074594>

Landlords

Who are Landlords in this market

Just like the commercial tenants, they range in size and type. To loosely categorise them:

1. Small 'mum and dad' first time investor
2. Landlords with 1-3 smaller style properties
3. Retirees or those nearing retirement that rely on rent for income in retirement
4. Business owners that outgrew their previous premises and now rent that out
5. Larger owners holding several multiple-tenancy properties.
6. Investment groups with multi-tenant or small shopping centre style properties.

Rent Help

How are landlords going to help

While a range of assistance and support packages have been rolled out for businesses and commercial tenants, at this stage landlords have not been provided any.

Landlords are faced with numbers costs in relation to the property ownership and while loans and financing is usually the largest, here are some of the other costs that many incur:

- Council Rates and Charges
- Water - Sewerage - Rubbish
- Insurance
- Body Corporate Levies
- Accounting and Taxation costs
- Management and Administration costs

Even if authorities defer the landlord's obligation to pay one or more of the above, the landlord's obligation to pay others is likely to remain. What we do know is that landlords are constantly monitoring assistance options that could assist all involved.

On Tuesday 7 April, Prime Minister Scott Morrison released a media statement containing the following:

Commercial Tenancies

The National Cabinet agreed that states and territories would implement the attached mandatory Code of Conduct (the Code), including via legislation or regulation as appropriate, to implement the principles agreed on Friday 3 April. The Code builds on the draft codes submitted by landlord and tenant representative bodies in the commercial property sector.

The purpose of the Code is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, in circumstances where the tenant is a small-medium sized business (annual turnover of up to \$50 million) and is an eligible business for the purpose of the Commonwealth Government's JobKeeper programme.

National Cabinet agreed that there would be a proportionality to rent reductions based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants. The Code provides a proportionate and measured burden share between the two parties while still allowing tenants and landlords to agree to tailored, bespoke and appropriate temporary arrangements that take account of their particular circumstances.

National Cabinet again noted that it expects Australian and foreign banks along with other financial institutions operating in Australia, to support landlords and tenants with appropriate flexibility as they work to implement the mandatory Code.

The Commonwealth Government is also acting as a model landlord by waiving rents for all its small and medium enterprises and not-for-profit tenants within its owned and leased property across Australia.

The Rent Relief Policy will include a mutual obligation requirement on the small and medium sized enterprises and not-for-profit tenants to continue to engage their employees through the JobKeeper initiative where eligible, and if applicable, provide rent relief to their subtenants.

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

The Above link opens a PDF of the Code of Conduct including examples.



This page provides what we think is the **best summary of the measures of the Code of Conduct:**

[Relief for commercial tenants – Business.gov.au](#)

Australian Small Business and Family Enterprise Ombudsman Kate Carnell explains what the mandatory commercial tenancy code means for small businesses struggling with rent costs.



These industry articles provide commentary and summary of the current announcements:

[Prime Minister Scott Morrison confirms mandatory code for commercial tenants and landlords during coronavirus crisis](#)



“I think we’re going to have to wait for more detail to come out. The federal government is providing the guide, but the states still have to enact it in the same way for it to be uniform.”

[Government reveals new rules for commercial property tenancies](#)



The code, which was confirmed at Tuesday’s National Cabinet meeting, says leases must be honoured but landlords will be required to reduce rent on their commercial properties in proportion to their tenant’s drop in trade.

What has been clear is that most landlords want to help in one way or another, however each arrangement will be very specific to each commercial tenant and landlord based on each of those individual circumstances and capacity.

The industry is now waiting for the State Government to implement the code into legislation and provide information about how this will work. **This could take some time.**

At this stage it is not known what role a property manger or real estate agent would even have in this process.

In the meantime, we at The Commercial Guys are happy to pass on correspondence between tenants and landlords however there is currently no legislation or industry information for us to provide over and above the media release and principles behind the Code of Conduct above. We can't even provide commentary on what effect the Code once introduced might have on arrangements already agreed to or under consideration. It might be the case that any arrangement currently made should only be for April 2020 and reviewed subject to any changes to laws that re implemented in the next week or so.

Help Now

What help is there right now

In the interim here are just some of the assistance and support avenues that we are aware of:

[Economic Response to the Coronavirus](#)

[COVID-19 SUPPORT - Multiple Links and Resources](#)

[Coronavirus information and support for business](#)

[Queensland COVID-19 Jobs Support Loans](#)

[Business and industry support](#)

The Queensland government has developed [resources and fact sheets](#) for traders to help understand and prepare for COVID-19 impacts.



Next Steps

What should we be doing to get ready for the next steps?

While it is now with the State Government to implement the legislation and processes, we can see from the Code of Conduct that tenants will be required to supply:

2. Sufficient and accurate information: this includes information generated from an accounting system, and information provided to and/or received from a financial institution, that impacts the timeliness of the Parties making decisions with regard to the financial stress caused as a direct result of the COVID-19 event.

While landlords and tenants wait for further information, businesses can turn their minds to other steps the business could be taking to minimise the impacts of Covid19.

Suggestions of what to review in your business include:

1. Your operating hours
2. Your staffing levels (both permanents and casuals)
3. Current advertising (can it be switched off?)
4. Pre-loaded social media ads and posts (at the time of typing this sentence, Dominos just did a push alert for pizza for tonight's "big footy game")
5. Subscriptions and memberships
6. Other fixed and variable expenses that might cumulatively add up
7. New sales and income opportunities in this changing market

Other Help

Who else should we be talking to?

Commercial tenants

1. Talk to your bank and equipment finance contacts about what assistance they can provide
2. Accountants and solicitors have been quite active in providing guidance and assistance with identifying what support suits your particular business
3. Talk to your staff: most staff will have already recognised the downturn and have seen in the news that stand-downs are taking place: they might have some ideas you haven't thought of.

Landlords

1. Talk to your Accountant about the effects of possible rent relief options
2. Your Solicitor can give advice about your rights and ways to document a possible arrangement
3. Your bank can tell you about their deferment offering and whether you qualify
4. Your Asset/Property manager about what they are telling your tenants, and what information they are receiving

The numbers:

(As at the publication date/time)

To give you an idea of the numbers coming out of the tenancies under management here at [The Commercial Guys](#):

52% of tenancies have contacted us about rent regarding Covid19

17% of the tenancies are on the shutdown list and have closed or severely impacted

98% of landlords have been in communication with us.