

Fact Sheet

COVID-19 Omnibus
(Emergency Measures)
(Commercial Leases and
Licences) Regulations 2020
Victoria



VERSION: 1

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Fact Sheet on the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 Victoria

A brief summary of the Omnibus (Emergency Measures) (Commercial Leases & Licences) Regulations 2020 introduced by the Victorian State Government and which became effective from **29 March 2020**.

- [The Regulations](#)
- For the latest updates, tools and resources, visit reiv.com.au/covid-19. You may also like to join the [REIV Facebook Group](#) to assist Members during the Pandemic

Objectives of the regulations:

The objectives of these Regulations are to implement measures to apply to tenants and landlords under certain eligible leases to mitigate the effect of measures taken in response to the COVID-19 pandemic and to implement mechanisms to resolve disputes concerning eligible leases.

Relevant period:

The relevant period is **29 March 2020 to 29 September 2020**.

Eligible leases:

An **Eligible Lease** is defined in Part 2, Section 13 of the COVID-19 Omnibus (Emergency Measures) Act 2020 as a retail lease or a non-retail commercial lease or licence-

- (a) that is in effect on 29 March 2020;
- (b) under which the tenant is, on or after 29 March 2020 –
 - (i) an SME entity; and
 - (ii) an employer who qualifies for the jobkeeper scheme and is a participant in the jobkeeper scheme.

To be eligible for the jobkeeper scheme, a tenant must have experienced at least a 30% fall in turnover in any months after 1 March 2020 when compared to the corresponding month from the prior year.

Excluded classes of lease:

An eligible leases does not include any leases for premises used wholly or predominantly for the following activities –

- (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 section 3 of the **Farm Debt Mediation Act 2011**.

General obligations on landlords and tenants:

A landlord and tenant under an eligible lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matter to which these Regulations apply.

Rent relief process:

A tenant under an eligible lease may request rent relief from the landlord.

The rent relief request must be in writing and accompanied by -

- (a) A statement by the tenant that the tenant's lease is an eligible lease; and
- (b) Includes information that evidences that the tenant -
 - (i) is an SME, and
 - (ii) qualifies for, and is a participant in, the jobkeeper scheme.

On receipt of a tenant's conforming request, a landlord must offer rent relief within 14 days after receiving that request or a different time frame as agreed between the landlord and tenant in writing.

A landlord's offer of rent relief must be based on all the circumstances of the lease and;

- (a) relate to up to 100% of the rent payable under the lease during the relevant period; and
- (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 tenant otherwise agree in writing; and
- (c) Apply to the relevant period; and
- (d) **Take into account –**
 - (i) *The reduction in a tenant's turnover associated with the premises during the relevant period; and*
 - (ii) *Any waiver of outgoings given to the tenant by the landlord; and*
 - (iii) *Whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil their obligations under the lease, including the payment of rent; and*
 - (iv) *A landlord's financial ability to offer rent relief; and*
 - (v) *Any reduction to any outgoings charged, imposed or levied in relation to the premises.*

Following receipt of a landlord's offer by a tenant, the tenant and landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the relevant period.

Rent relief under the Regulations may be given by the landlord by –

- (a) A variation to the lease; or
- (b) Any other agreement between the landlord and tenant that gives effect to the rent relief, either directly or indirectly.

Subsequent rent relief:

If the financial circumstances of a tenant under a lease materially change after a variation to the lease or an agreement has been reached –

- (a) The tenant may make a further request to the landlord for rent relief; and
- (b) The landlord and the tenant must follow the process set out above; and

A landlord's offer of subsequent rent relief need not include any waiver of additional rent relief.

Repayment of deferred rent:

If any rent is deferred by variation to the lease or by agreement –

A landlord **must not** request payment of any part of the deferred rent until the earlier of

- a) Expiry of the relevant period (29 September 2020); and
- b) Expiry of the term of the lease, and

A landlord and tenant **must** vary the lease or otherwise agree so that the tenant must pay the deferred rent to the landlord amortised over the greater of -

- a) The balance of the term of the lease, (including any extension to that term); and
- b) A period of no less than 24 months.

The method by which the deferred rent is amortised by the landlord and tenant must be agreed in writing.

Extension of the term:

If the payment of any rent is deferred by variation of the lease or an agreement, the landlord **must** offer the tenant under the lease an extension to the term of their lease on the same terms and conditions that applied prior to the commencement of the Regulations.

The extension offered must be equivalent to the period for which rent is deferred unless a landlord and the tenant agree in writing that this regulation does not apply to their lease.

Tenant is not in breach of the lease:

A tenant is not in breach of the lease if they do not pay the amount of rent required to be paid under the lease during the relevant period **and only if they** –

- a) comply with the rent relief regulations during the relevant period; or
- b) during the relevant period, pay an amount of rent in accordance with -
 - (i) any variation to the lease mentioned; or
 - (ii) any other agreement.

A landlord must not evict or attempt to evict a tenant. (*Penalty 20 penalty units*)

A landlord must not re-enter or otherwise recover, or attempt to re-enter or recover, the premises. (*Penalty 20 penalty units*)

{contd.}

A landlord must not have recourse or attempt to have recourse to any security relating to the non-payment of rent under the lease. *(Penalty 20 penalty units)*

Recovery of outgoings or expenses:

A landlord must consider waiving recovery of any outgoings or other expense payable by the tenant under the lease for any part of the relevant period that the tenant is not able to operate their business at the premises.

In such circumstances, the landlord may cease to provide, or reduce provision of, any service at the premises as is reasonable in the circumstances and in accordance with any reasonable request of the tenant.

Reduction in landlord's outgoings:

If any outgoings charged, imposed or levied in relation to the premises are reduced –

- (i) A landlord **must not** require a tenant to pay any amount of that outgoing that is greater than the tenant's proportionate share of the reduced outgoing payable under the lease; and
- (ii) If the tenant has already paid to the landlord an amount greater than the tenant's proportionate share of the reduced outgoing, the landlord **must** reimburse the excess amount to the tenant as soon as possible.

Prohibition on rent increases:

A landlord **must not** increase the rent payable at any time during the relevant period (other than for turnover rental) unless the landlord and tenant agree in writing that this regulation does not apply to the lease.

No fees, interest or charges by the landlord:

A landlord **must not** require a tenant under the lease to pay interest any other fee or charge in relation to any payment of rent deferred by variation to the lease or any agreement.

Tenant may reduce business hours or cease trading:

The tenant is not in breach of the lease if during the relevant period they –

- (a) Reduce the opening hours of the business they carry out at the premises; or
- (b) Close the premises and cease to carry out any business at the premises.

A landlord must not evict or attempt to evict a tenant. *(Penalty 20 penalty units)*

A landlord must not re-enter or otherwise recover, or attempt to re-enter or recover, the premises. *(Penalty 20 penalty units)*

A landlord must not have recourse or attempt to have recourse to any security relating to the non-payment of rent under the lease. *(Penalty 20 penalty units)*

Confidential information:

A landlord or tenant must not divulge or communicate **protected information** obtained or in connection with the operation of these Regulations except –

- (a) With the consent of the person to whom the information relates; or
- (b) To a professional advisor 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) An authorised under the law (Commissioner of State Revenue for the purpose of applying a tax relief measure); or
- (f) For the purposes of any proceeding in a court or tribunal.

Protected information means –

- (a) Personal information (name, address and contact details of any person (other than the landlord or tenant)); or
- (b) Information relating to business processes or financial information (including information about the trade of a business)

Dispute resolution:

A landlord or a tenant may refer a dispute about the terms of the lease to the Small Business Commission for mediation.

Legal representation:

A landlord or tenant may be represented by a legal practitioner in a mediation.

Determination of lease disputes by VCAT:

A lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the Small Business Commission has certified in writing that mediation has failed or is unlikely to resolve the dispute.