

Commercial Leasing Code of Conduct

10 APRIL 2020

On Tuesday 7 April 2020 the National Cabinet released a mandatory code of conduct containing “good faith leasing principles”, which will apply to all commercial tenancies. Each state and territory will pass their own legislation and regulations to give effect to the mandatory code.

There are many questions and uncertainties surrounding the code. The code is effective from 3 April 2020 (being the date the National Cabinet agreed to the principals of the code) and will remain until the Commonwealth JobKeeper program ends.

This Code of Conduct applies to all commercial tenancies where the tenant is an eligible business for the purposes of the Commonwealth JobKeeper programme. It appears that the tenant merely needs to be eligible for the JobKeeper payment, it is not necessary that they actually claim it.

Determining the amount of decrease in turnover will be critical.

The leasing principles established include a “proportionate reduction” in the rent payable, in the form of waivers and deferrals, in line with the reduction in turnover. The waiver component of the proportionate reduction in rent, must be at least 50%. The balance of the proportionate reduction in rent is to be deferred and will be payable to the landlord over the remainder of the lease term or 24 months (whichever is longer).

In addition, Landlords must not terminate leases, or access a tenants security (such as a bank guarantee) to pay rent. The principles relating to statutory and other outgoings, are less clear and suggest landlords should, where appropriate, seek to waive recovery during the period a tenant is not able to trade.

Furthermore, interest and fees are not payable on any waived rent, and no fees, charges or punitive interest can be charged on deferred rent. If the landlord and tenant can't agree then they must attend binding mediation.

Please don't hesitate to contact your Hall Chadwick Director, who will be happy to help you work through the principles outlined in the Code of Conduct.

[Click here to view the Code of Conduct](#)