

Get started on negotiating a commercial lease with your landlord

On this page

[Introduction](#)

[Eligibility](#)

[What you need](#)

[How to get started](#)

[Retail shop leases](#)

[More information](#)

[Documents](#)

[Links](#)

Introduction

If you own a business, and due to the impacts of COVID-19 you're finding it difficult to meet your lease obligations such as rental payments or outgoings, you may be able to renegotiate the terms of your lease with a landlord.

From 1 January 2021 to 28 March 2021, if you're eligible under the [Retail and Other Commercial Leases \(COVID-19\) Regulation \(No 3\) 2020 – PDF](#) ('the Regulation'), your landlord must comply with their obligations under the Regulation to renegotiate your rent if requested, and mediate any disputes.

Unless they have complied, they cannot:

- evict you for not paying your rent or outgoings
- evict you because your business is not open during the core trading hours in your lease
- make a claim on a security bond or guarantee for rent or outgoings
- increase your rent
- charge you interest or fees on any unpaid rent.

If you're eligible under the Regulation, you can work with your landlord to renegotiate your rent or other lease terms.

For example, you can negotiate the duration of any fixed term, options, or permitted use of their property. You may also be able to reduce your rent in proportion to your reduced turnover.

Half of any rent reduction will be repayable to your landlord later, and if they reduce your rent they may also be eligible for [COVID-19 Land Tax relief](#).

In addition, if you're required to contribute towards land tax or any other statutory charge or insurance payable by your landlord, and this outgoing is reduced, you're exempt from paying the reduced amount.

1 January 2021 to 28 March 2021 is the **second extension** to the Regulation, so check to see if you're [still eligible](#). Some tenants who were eligible before this extension, may not be now.

If you're eligible and ask to renegotiate your rent, your landlord needs to start your negotiation within 14 days, or another time frame you both agree on.

Eligibility

To be eligible to negotiate the terms of your lease under this second extension to the Regulation, you need to:

- have a [retail shop lease](#)
- be eligible for, or receiving JobKeeper, from 4 January 2021, or be able to demonstrate an actual decline in turnover for the 2020 December quarter of at least:
 - 30 per cent, or
 - 15 per cent if it's a not-for-profit business.
- have had an annual turnover in 2018-2019 under \$5 million:
 - excluding JobKeeper payments
 - including other government subsidies such as the NSW small business COVID-19 support grant.

Note: If you do not think you're eligible under the Regulation, you can [Get guidance on how to negotiate a commercial lease](#) from a Business Concierge.

What you need

You'll need to provide your landlord with a:

- Business Enrolment for JobKeeper Wage Subsidy ATO receipt, or show a decline in turnover with either:
 - comparable bank statements
 - comparable monthly or quarterly Business Activity Statements (BAS), or
 - information from your accounting system.
- tax return or BAS to show your annual turnover in 2018-2019.

How to get started

1. Select the 'Get started' button.
2. Follow the guide to help you understand your rights and obligations as a tenant and get started on the negotiation process.

Retail shop leases

A retail shop lease is a lease covered by the *Retail Leases Act 1994* (the Act).

The types of shops covered are listed in [Schedule 1](#) of the Act and include everything you would expect to see in high street retail, such as:

- clothing retailers
- hairdressers
- butchers
- beauticians

- cafés and restaurants
- newsagencies
- travel agencies.

Businesses in a retail shopping centre are also included in Schedule 1.

Premises listed in [Schedule 1A](#) of the Act that do not need real people to provide services, such as vending machines and ATMs, are excluded.

Also excluded are certain shops, such as those of more than 1,000 square metres.

You may need to get legal advice if you're unsure whether your tenancy is classified as a retail shop lease.

More information

- Your landlord must keep information provided by you as confidential and use it only for the purpose of complying with the Regulation.
- The NSW Government enacted the Regulation to implement the National Cabinet's Code of Conduct ('the Code') for commercial tenancies.
- For a comprehensive breakdown of the Code, visit [NSW implementation of the National Code of Conduct for Commercial Leases](#).
- Keep in mind that you and your landlord can both agree to opt out of any, or all, of the 14 leasing principles in the Code. You can make other arrangements if you both choose to, depending on both of your individual circumstances.
- If you meet the [eligibility criteria](#) and you've already negotiated rent relief, you may be eligible to ask to negotiate again before 28 March 2021. That's as long as you're asking to negotiate for a new time period.
- You can use these [Examples of commercial lease negotiations](#) under the previous Regulation, to get an understanding of how a negotiation might proceed.