

Get started on negotiating a commercial lease with your tenant

On this page

[Introduction](#)

[Eligibility](#)

[What you need](#)

[How to get started](#)

[Retail shop leases](#)

[More information](#)

[Documents](#)

[Links](#)

Introduction

If you're a commercial property owner or you represent one, your tenant may be finding it difficult to meet their lease obligations due to the impacts of COVID-19 on their business. For example, they may not be able to pay their rent or outgoings detailed in their lease agreement.

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

Unless you have complied, you cannot:

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

If your tenant is eligible under the Regulation, you may be required to renegotiate their rent or other lease terms, such as the duration of any fixed term, options, or permitted use of your property.

You may also consider reducing their rent in proportion to their reduced turnover.

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

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

1 January 2021 to 28 March 2021 is the **second extension** to the Regulation, so your tenant needs to reassess the eligibility requirements to see if they're still eligible. Some tenants who were eligible before this extension, may not be now.

If your eligible tenant asks to renegotiate their rent, you need to start your negotiation within 14 days, or another time frame you both agree on.

Eligibility

To be eligible to negotiate the terms of their lease under this second extension to the Regulation, your tenant needs 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 your tenant is eligible under the Regulation, it's still a good idea to negotiate to help ensure better longer-term outcomes for both you and your tenant. You can also [Get guidance on how to negotiate a commercial lease](#) from a Business Concierge.

What you need

Your tenant will need to provide you with a:

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

- You must treat information provided by your tenant as confidential and use the information 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 tenant 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 your tenant meets the [eligibility criteria](#) and they've already negotiated rent relief, they may be eligible to ask to negotiate again before 28 March 2021. That's as long as they'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.