

Article Information

Authors: Kylie Maxwell, Warren Denny, Mark Askin

Service: Corporate & Commercial, Leasing, Property & Development, Property & Development Finance, Property Development, Property Transactions, Strata & Community Title

Sector: Agriculture & Food, Hospitality, Tourism & Gaming, Private Clients, Real Estate, Transport & Logistics

Rent Relief arising from COVID-19

Are you a commercial Tenant or Landlord seeking to negotiate temporary arrangements in response to the impact of the coronavirus?

On 29 March 2020 the National Cabinet has released a Statement which sets out a common set of principles to govern intervention in the landlord tenant relationship and which is intended to assist a business to hibernate.

The aim is temporary rent relief for the tenant and in exchange it is hoped that the landlord will retain the tenant in the long term.

This is achieved by the following:

- a temporary prohibition on evictions for the next six months for commercial tenancies impacted by severe rental distress due to coronavirus;
- suggests commercial tenants and landlords with severe rental distress are encouraged to agree on rent relief or temporary arrangements;
- mentions the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress; and
- suggests landlords and tenants who are not significantly affected need to honour lease agreements.

While the principles facilitating engagement between landlords and tenants are commercially sensible and consistent with the recommendations we have been giving our clients to date, the concept of termination for financial hardship raises complex issues. Not only is it inconsistent with the temporary 'hibernation' principles being put in place, but its application is uncertain without further guidance or legislation.

The government closure of businesses and the flow on effect will mean that many tenants will be looking to negotiate rent relief under leases.

If a landlord is prepared to offer a rent concession they should expect to receive assurances as to the continued performance of the lease from a tenant in exchange.

Whatever commercial terms may be agreed between landlords and tenants, any 'temporary' relief measures should:

- be documented as a deed to ensure the arrangements are enforceable;
- provide that the rent concession /relief agreed which is documented is expressed to be the totality of the relief available as a result of the coronavirus; and
- ensure that to the extent possible, the terms agreed by the deed can not be overridden by any legislation.