



**The Hon. Scott Morrison MP**  
Prime Minister

## **STATEMENT**

Tuesday 7 April 2020

### **UPDATE ON CORONAVIRUS MEASURES**

Australian governments met today as the National Cabinet to take further action to slow the spread of coronavirus to save lives, and to save livelihoods.

We will be living with this virus for at least six months, so social distancing measures to slow the spread of this virus must be sustainable for at least that long to protect Australian lives.

We need to ensure Australia keeps functioning, to keep Australians in jobs.

The Chief Medical Officer Dr Brendan Murphy provided an update on the measures underway on the latest data and medical advice in relation to coronavirus.

There are more than 5,800 confirmed cases in Australia, and more than 2,400 people have recovered from the virus. Sadly 44 people have died.

Testing keeps Australians safe. Australia has one of the most rigorous coronavirus testing systems in the world with more than 304,000 tests completed.

It is clear the epidemiology curve is beginning to flatten. But it is still too early to determine whether such movements will be significant or sustained. That's why it's important that all Australians continue to adhere to the social distancing measures.

Many Australians have been looking forward to an Easter holiday. National Cabinet reiterated previous advice that social distancing must continue and that Australians should stay at home and not undertake unnecessary holiday travel.

Leaders thanked all Australians who have acted responsibly and have been undertaking social distancing and isolation measures.

National Cabinet reiterated that social distancing is slowing the spread of the virus in Australia. These measures are saving lives and livelihoods. National Cabinet reminded Australians that social distancing

must continue at Easter and agreed that Australians should stay at home this Easter and not undertake unnecessary holiday travel.

National Cabinet will meet again on Thursday 9 April 2020.

### **Commercial Tenancies**

The National Cabinet agreed that states and territories would implement the attached mandatory Code of Conduct (the Code), including via legislation or regulation as appropriate, to implement the principles agreed on Friday 3 April. The Code builds on the draft codes submitted by landlord and tenant representative bodies in the commercial property sector.

The purpose of the Code is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, in circumstances where the tenant is a small-medium sized business (annual turnover of up to \$50 million) and is an eligible business for the purpose of the Commonwealth Government's JobKeeper programme.

National Cabinet agreed that there would be a proportionality to rent reductions based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants. The Code provides a proportionate and measured burden share between the two parties while still allowing tenants and landlords to agree to tailored, bespoke and appropriate temporary arrangements that take account of their particular circumstances.

National Cabinet again noted that it expects Australian and foreign banks along with other financial institutions operating in Australia, to support landlords and tenants with appropriate flexibility as they work to implement the mandatory Code.

The Commonwealth Government is also acting as a model landlord by waiving rents for all its small and medium enterprises and not-for-profit tenants within its owned and leased property across Australia.

The Rent Relief Policy will include a mutual obligation requirement on the small and medium sized enterprises and not-for-profit tenants to continue to engage their employees through the JobKeeper initiative where eligible, and if applicable, provide rent relief to their subtenants.

### **Impact of coronavirus - Theoretical modelling of how the health system can respond**

Australia has a world class health system, including an Australian Health Sector Emergency Response Plan for Novel Coronavirus Management Plan. The Plan includes modelling of possible scenarios of coronavirus spreading through Australia. This informs the actions taken to slow the spread and prepare the health system.

Today National Cabinet released the first set of theoretical scenario modelling undertaken to inform how Australia is preparing our health system, including our Intensive Care Units (ICUs), for coronavirus.

A summary of the modelling is attached, and the modellers will release a technical paper on the data today.

National Cabinet noted that the hypothetical scenarios were commissioned in early February, when the outbreak began and prior to National Cabinet implementing measures to reduce transmission and flatten the curve including through travel restrictions and social isolation.

National Cabinet noted that the modelling is a useful tool but it does not predict the future. In the real world, we can adjust restrictions as the outbreak evolves to manage the length of the outbreak.

What the modelling has done and continues to do, is to inform Australian governments and medical experts so we can take actions to slow the spread of coronavirus and ensure our health system is prepared under a range of scenarios.

National Cabinet noted that early data suggests the existing measures in Australia are flattening the curve to a point where the health system can meet expected demand. So far only 8 percent of cases in Australia have required hospitalisation and ICU.

While the modelling does not show how the virus will move through our community, it tells us some important things including that we would have been overwhelmed if we had not reduced the number of travellers and introduced public health measures.

The modelling does not reflect the actual recent evidence of the spread of the virus in Australia and measures that the National Cabinet has announced to slow the spread of the virus.

National Cabinet will commission a next phase of the modelling that will put Australian data into the model and see how it aligns to our actual experience. This has not been an option to date given the relatively small amount of data available on community transmission of the virus in Australia. As more 'real' data is put into the model its accuracy improves. National Cabinet has requested the first results of this modelling include state and territory breakdowns to reflect the different stages of coronavirus transmission by jurisdiction.

The theoretical scenario modelling by the University of Melbourne (Doherty Institute) Pandemic Modelling Team finds an uncontrolled coronavirus pandemic would overwhelm our health system for many weeks. Around 89 per cent of people would catch the virus, with 38 percent requiring some medical care. ICUs would be well beyond capacity for a prolonged period.

Quarantine and isolation slow the rate of transmission. This flattens the epidemiological curve. It reduces the proportion of people who would catch the virus to 68 percent, and those needing medical care to 29 percent. While this reduces the peak demand on ICUs, the modelled expanded ICU capacity would not be enough for several weeks.

Social distancing makes it harder for the virus to spread and reduces the proportion of people infected. The modellers have looked at two levels of social distancing. With a 25 percent reduction in transmission due to social distancing, the proportion of people infected would be 38 percent with 16 percent requiring some medical care.

With a 33 per cent reduction in transmission due to social distancing, the proportion of people infected is 12 percent and only 5 percent require some medical care.

The modelling confirms that with social distancing and an expansion in ICU capacity, everyone who needs an ICU bed over the course of the pandemic could access one.

The modelling parameters further show the severity of coronavirus on different age groups based on hospitalisation and ICU admission. The results for aged groups vary significantly with the rate of hospitalisation for cases under 20 years at 0.62 percent and negligible ICU needs. For older people, coronavirus has more severe impacts with 35.8 percent of cases requiring hospitalisation for those between 70 and 79 year olds and 65.9 percent of cases for over 80 year olds.

Unlike many countries, we have an opportunity in Australia to choose how to respond from a position of relative control. We can tailor our interventions to gain the most benefit and minimise the cost to society.

#### **AHPPC Advice**

National Cabinet noted the AHPPC advice on the use of Off-label Medicines for Treatment and Prophylaxis of coronavirus; Healthcare Worker Use of PPE When Caring for Suspected or Confirmed coronavirus Patients; Home Isolation; Organ Donation and Transplantation during the coronavirus Pandemic; and Rapid Point of Care Lateral Flow Devices to Detect Antibodies to SARS-COV-2.

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# **NATIONAL CABINET MANDATORY CODE OF CONDUCT**

## **SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19**

### **PURPOSE**

The purpose of this Code of Conduct (“the Code”) is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, where the tenant is an eligible business for the purpose of the Commonwealth Government’s JobKeeper programme.

These principles will apply to negotiating amendments in good faith to existing leasing arrangements – to aid the management of cashflow for SME tenants and landlords on a proportionate basis – as a result of the impact and commercial disruption caused by the economic impacts of industry and government responses to the declared Coronavirus (“COVID-19”) pandemic.

This Code applies to all tenancies that are suffering financial stress or hardship as a result of the COVID-19 pandemic as defined by their eligibility for the Commonwealth Government’s JobKeeper programme, with an annual turnover of up to \$50 million (herein referred to as “SME tenants”).

The \$50 million annual turnover threshold will be applied in respect of franchises at the franchisee level, and in respect of retail corporate groups at the group level (rather than at the individual retail outlet level).

The Parties to this Code concur that during the COVID-19 pandemic period, as defined by the period during which the JobKeeper programme is operational, the principles of this Code should nevertheless apply in spirit to all leasing arrangements for affected businesses, having fair regard to the size and financial structure of those businesses.

Appendix I gives examples of proportionate solutions that may be agreed under this Code, and forms part of the overall Code.

The Code has been developed to enable both a consistent national approach and timely, efficient application given the rapid and severe commercial impact of official responses to the COVID-19 pandemic.

### **PARTIES TO THE CODE**

The Code will be given effect through relevant state and territory legislation or regulation as appropriate. The Code is not intended to supersede such legislation, but aims to complement it during the COVID-19 crisis period.

## OVERARCHING PRINCIPLES

The objective of the Code is to share, in a proportionate, measured manner, the financial risk and cashflow impact during the COVID-19 period, whilst seeking to appropriately balance the interests of tenants and landlords.

It is intended that landlords will agree tailored, bespoke and appropriate temporary arrangements for each SME tenant, taking into account their particular circumstances on a case-by-case basis.

The following overarching principles of this Code will apply in guiding such arrangements:

- Landlords and tenants share a common interest in working together, to ensure business continuity, and to facilitate the resumption of normal trading activities at the end of the COVID-19 pandemic during a reasonable recovery period.
- Landlords and tenants will be required to discuss relevant issues, to negotiate appropriate temporary leasing arrangements, and to work towards achieving mutually satisfactory outcomes.
- Landlords and tenants will negotiate in good faith.
- Landlords and tenants will act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code.
- Any agreed arrangements will take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.
- The Parties will assist each other in their respective dealings with other stakeholders including governments, utility companies, and banks/other financial institutions in order to achieve outcomes consistent with the objectives of this Code.
- All premises are different, as are their commercial arrangements; it is therefore not possible to form a collective industry position. All parties recognise the intended application, legal constraints and spirit of the Competition and Consumer Act 2010.
- The Parties will take into account the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.

- All leases must be dealt with on a case-by-case basis, considering factors such as whether the SME tenant has suffered financial hardship due to the COVID-19 pandemic; whether the tenant's lease has expired or is soon to expire; and whether the tenant is in administration or receivership.
- Leases have different structures, different periods of tenure, and different mechanisms for determining rent. Leases may already be in arrears. Leases may already have expired and be in "hold-over." These factors should also be taken into account in formulating any temporary arrangements in line with this Code.
- As the objective of this Code is to mitigate the impact of the COVID-19 pandemic on the tenant, due regard should be given to whether the tenant is in administration or receivership, and the application of the Code modified accordingly.

## **LEASING PRINCIPLES**

In negotiating and enacting appropriate temporary arrangements under this Code, the following leasing principles should be applied as soon as practicable on a case-by-case basis:

1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.
3. Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals (as outlined under "definitions," below) of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.
4. Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle #3 above over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement.
5. Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.

6. Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease.

7. A landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other case-by-case deferral of loan repayments offered to other Landlords, with the tenant in a proportionate manner.

8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances.

9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period.

10. No fees, interest or other charges should be applied with respect to rent waived in principles #3 and #4 above and no fees, charges nor punitive interest may be charged on deferrals in principles #3, #4 and #5 above.

11. Landlords must not draw on a tenant's security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19 pandemic and/or a reasonable subsequent recovery period.

12. The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period outlined in item #2 above. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes.

13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant.

14. Landlords may not apply any prohibition on levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

## **BINDING MEDIATION**

Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable state or



territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Champions/Ombudsmen where applicable.

Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.

## **DEFINITIONS**

The following definitions are provided for reference in the application of this Code.

1. Financial Stress or Hardship: an individual, business or company's inability to generate sufficient revenue as a direct result of the COVID-19 pandemic (including government-mandated trading restrictions) that causes the tenant to be unable to meet its financial and/or contractual (including retail leasing) commitments. SME tenants which are eligible for the federal government's JobKeeper payment are automatically considered to be in financial distress under this Code.
2. Sufficient and accurate information: this includes information generated from an accounting system, and information provided to and/or received from a financial institution, that impacts the timeliness of the Parties making decisions with regard to the financial stress caused as a direct result of the COVID-19 event.
3. Waiver and deferral: any reference to waiver and deferral may also be interpreted to include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease), or any other such commercial outcome of agreements reached between the parties. Any amount of reduction provided by a waiver may not be recouped by the Landlord over the term of the lease.
4. Proportionate: the amount of rent relief proportionate to the reduction in trade as a result of the COVID-19 pandemic plus a subsequent reasonable recovery period, consistent with assessments undertaken for eligibility for the Commonwealth's JobKeeper programme.

## **CODE ADMINISTRATION COMMITTEE**

This Code will be supported by state based Industry Code Administration Committees, comprising representatives from relevant industry bodies representing landlord, tenant and SME interests, with an Independent Chair appointed by the relevant State/Territory Government.

Committee members' roles will be to (1) promote awareness of the Code; (2) encourage application of the Code; (3) encourage its application by the broader retail industry; and (4) monitor the operation of the Code.

The Committee should meet at least fortnightly, and may communicate and meet via email, telephone calls, or video conferencing.

No formal minutes will be taken; however, the Committee will document key action items and outcomes of each meeting.

The Committee may invite advisers, upon agreement by all Committee members, to assist on specific issues in the course of discharging their obligations under this section.

## **COMMENCEMENT/EXPIRY**

This Code comes into effect in all states and territories from a date following 3 April 2020 (being the date that National Cabinet agreed to a set of principles to guide the Code to govern commercial tenancies as affected by the COVID-19 pandemic) to be defined by each jurisdiction, for the period during which the Commonwealth JobKeeper program remains operational.

## **APPENDIX I**

### **EXAMPLES OF THE APPLICATION OF THE PRINCIPLE OF PROPORTIONALITY**

The following scenarios are examples only, noting the circumstance of each landlord, SME tenant and lease are different, and are subject to negotiation and agreement in good faith.

Examples of practical variations reflecting the application of the principle of proportionality may include, but are not limited to:

- Qualifying tenants would be provided with cash flow relief in proportion to the loss of turnover they have experienced from the COVID-19 crisis
  - ie. a 60% loss in turnover would result in a guaranteed 60% cash flow relief.
  - At a minimum, half is provided as rent free/rent waiver for the proportion of which the qualifying tenant's revenue has fallen.
  - Up to half could be through a deferral of rent, with this to be recouped over at least 24 months in a manner that is negotiated by the parties
    - So if the tenant's revenue has fallen by 100%, then at least 50% of total cash flow relief is rent free/rent waiver and the remainder is a rent deferral. If the qualifying tenant's revenue has fallen by 30%, then at least 15% of total cash flow relief is rent free/rent waiver and the remainder is rent deferral.
    - Care should be taken to ensure that any repayment of the deferred rent does not compromise the ability of the affected SME tenant to recover from the crisis.
  - The parties would be free to make an alternative commercial arrangement to this formula if that is their wish.