



# Commercial Property - Rental Relief

College Chronicle  
Newsletter

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Australian College  
of Professionals

RTO 91513



# Commercial Property - Rental Relief

This is possibly the most talked about issue in property management during these most difficult of times.

Most property managers are being contacted continuously by both tenants and landlords and they are expecting you to know what to do.

The Mandatory Code of Conduct for SME commercial leasing principles during COVID-19 has been released and has set 14 leasing principles to facilitate negotiations and continued business success throughout the COVID-19 pandemic. The Code outlines a set of good faith leasing principles for commercial tenancies including retail, office and industrial, between owners, operators, other landlords and tenants.

## **THIS CODE APPLIES TO TENANTS THAT ARE:**

- » **a small to medium sized business with an annual turnover of up to \$50 million**
- » **eligible for the JobKeeper payment**

Rent reductions will be based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants. The policy includes a mutual obligation requirement on the small and medium sized businesses and not-for-profit tenants to continue to engage their employees through the JobKeeper payment where eligible, and if applicable, provide rent relief to their subtenants.

Australian and foreign banks, along with other financial institutions operating in Australia, are expected to support landlords and tenants with appropriate flexibility as they work to implement the mandatory Code.

The 14 principles are relatively straight forward and unambiguous:

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 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.

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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 the 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.

## UPCOMING CPD WEBINARS

### 3 HOUR COMPULSORY CPD

<b>Strata Management</b>	TUE <b>28<sup>TH</sup></b> APR
<b>Sales &amp; Leasing</b>	TUE <b>12<sup>TH</sup></b> MAY
<b>Strata Management</b>	TUE <b>26<sup>TH</sup></b> MAY
<b>Sales &amp; Leasing</b>	TUE <b>9<sup>TH</sup></b> JUN
<b>Strata Management</b>	THU <b>23<sup>RD</sup></b> JUN

### 3 HOUR ELECTIVE CPD

<b>Residential Property Management</b>	TUE <b>21<sup>ST</sup></b> APR
<b>Property Sales</b>	TUE <b>5<sup>TH</sup></b> MAY
<b>Residential Property Management</b>	TUE <b>19<sup>TH</sup></b> MAY
<b>Property Sales</b>	TUE <b>2<sup>ND</sup></b> JUN
<b>Property Sales</b>	TUE <b>16<sup>TH</sup></b> JUN

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 or levy any penalties if tenants reduce opening hours or

cease to trade due to the COVID-19 pandemic.

We recommend that you as an agent, commence the discussions between your commercial tenants and your commercial landlords in relation to the financial position of both parties. You are at the centre of this issue, and will need to use your best negotiation and conciliation skills in reaching some agreement for both parties.

**'Til next time, wishing you every success in your business ventures,**

**Rosy Sullivan**  
**College Director & Principal**

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## From the office

Well what an odd section of our newsletter we are writing today, as at this point in time, there is no-one in the ACOP head office at Town Hall.

We are now all working from our homes, and the phones and emails are being answered by your usual ACOP team members.

We have been busy supporting our students through the very unusual circumstances of COVID-19 and it's effect on the property industry. Our webinars are running thick and fast in relation to CPD (both compulsory and elective sessions), and also general information webinars particularly on the property management impacts in our current environment. Naturally, our online student portal has been very busy with students completing their courses and their CPD, but our webinars have been particularly popular – we think that everyone (including us) are craving some

interaction with different people and the opportunity to discuss how we are all dealing with the situation from both a personal and a business perspective.

As a team, we at ACOP are having Zoom meetings in the morning and the afternoon to ensure that we remain partly sane and get the interaction that we all crave. And before the office totally closed last week, we did manage to celebrate Rosemary's birthday with a cake in the shape of dog (Rosemary's favourite animal). Please note that we did leave the face till last : )

We hope that all our wonderful students and clients are coping as well as you can through these difficult times and be assured that we are always here to assist you.

PROPERTY SERVICES

# CONSUMER GUIDES

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