

# LEASING ADVICE – FROM THE VICTORIAN SMALL BUSINESS COMMISSION

To ease financial hardship faced by some tenants and landlords as a result of the coronavirus (COVID-19) pandemic, the Victorian Government has introduced the [Commercial Tenancy Relief Scheme](#) (the Scheme).

The [Regulations](#) for the Scheme have been made under the [COVID-19 Omnibus \(Emergency Measures\) Act 2020](#). Under the Scheme, the Victorian Small Business Commission (VSBC) is providing commercial tenants and landlords with access to free mediation to support fair tenancy negotiations.

## What steps can tenants and landlords take to resolve tenancy matters?

If a commercial tenant is having trouble paying rent as a result of the coronavirus (COVID-19) pandemic, the VSBC recommends:

- tenants keep paying what they can afford
- tenants work out their financial situation (i.e. their reduction in turnover) and
- both tenants and landlords talk to each other to try and reach an agreement on rent relief.

It is important for tenants and landlords to communicate with each other about their situation early on and if they require further information, they can [contact the VSBC](#). If they cannot reach an agreement or get a response from the other party, the tenant or landlord can [apply for free mediation with the VSBC](#) for help to resolve their rent dispute.

Visit the VSBC's website to:

- learn more about the [steps for tenants and landlords under the Scheme](#)
- download a [letter template to use when requesting rent relief](#)
- see [responses to frequently asked questions](#).

## Scenarios

### Scenario 1: A restaurant in Melbourne's CBD

#### Impact

Due to restrictions in place to slow the spread of coronavirus (COVID-19) and surrounding businesses closing, the business owner has experienced a 40 per cent downturn in trade.

#### Access to JobKeeper

The business owner (the tenant) is [eligible](#) for and is accessing JobKeeper payments.

#### Access to rent relief

The tenant [writes to the landlord](#) providing evidence they are a small or medium sized enterprise (SME) who is participating in JobKeeper and is therefore eligible for the [Commercial Tenancy Relief Scheme](#) (the Scheme).

The tenant requests a reduction in rent (currently \$4,000 per month) to the landlord that is equivalent to the tenant's downturn in trade (40 per cent).

*The [Victorian Small Business Commission](#) is an independent government agency that advocates on issues affecting small business, educates people in small business about their rights and responsibilities, and helps them to avoid or resolve disputes.*

The landlord responds to the tenant's request within the required 14 days. The tenant and landlord come to an agreement for a rent reduction of \$1,600 per month – equivalent to the 40 per cent downturn in the tenant's business trade – within the period of 29 March to 29 September 2020. This is made up of \$800 in rent per month being waived (the minimum 50 per cent of rent reduction that must be made up of rent waivers) and \$800 per month being deferred until 29 September 2020.

The landlord and tenant agree on a payment schedule for the deferred part of the rent (\$4,800) to be paid over 24 months.

The tenant's lease was to end on 30 June 2021. Under the Regulations for the Scheme, the landlord must offer the tenant an extension of the lease equal to the length of time that rent is deferred.

As the rent is deferred for six months, the landlord offers the tenant a six-month extension. The tenant has the option to accept the six-month extension or request to negotiate further.

The tenant accepts the offer.

## **Scenario 2: A clothing and footwear retailer located on a suburban street**

### **Impact**

Due to restrictions in place to slow the spread of coronavirus (COVID-19) and a decrease in customers, the business owner has experienced a 50 per cent downturn in trade.

### **Access to JobKeeper**

The business owner (the tenant) is not eligible to participate in the JobKeeper scheme.

### **Access to rent relief**

The tenant is not eligible to participate in the Commercial Tenancy Relief Scheme **because they are not eligible to participate in the JobKeeper scheme.**

However, businesses not covered by the the [Commercial Tenancy Relief Scheme](#) can still access dispute resolution services from the VSBC to help resolve their rent relief dispute – at no cost.

The tenant contacts the landlord to discuss their situation and negotiate rent reduction, as guided by the [Australian Government's Mandatory Code of Conduct for commercial tenancies to support SMEs affected by coronavirus \(the Code\)](#). The tenant is unable to reach agreement with the landlord and applies for mediation with the VSBC.

At mediation, the landlord and tenant were provided with a safe environment where they were able to use the Code and were supported by a mediator to discuss their differences and recognise that genuine hardship has occurred.

The parties negotiated a binding agreement, where the landlord agreed to accept a reduced rent amount and defer part of the rent for six months.

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