

# COVID-19 & Eligible Leases

## Background

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On 1 May 2020, the COVID-19 Omnibus (Emergency Measures) (Commercial Lease and Licenses) Regulations 2020 (“**Regulations**”) were published. In summary, the regulations have been passed to set down the manner and form of negotiations between landlords and tenants affected by COVID-19 for the period of 29 March 2020 – 29 September 2020. Please find a copy of the Regulations **attached** to the back of this guide for your reference.

We have provided the following notes on the Regulations to assist you in navigating what will, in all likelihood, be difficult negotiations. This commentary is, of course, general in nature, and each agreement as to rent relief will be unique, but we hope that it proves to be of some assistance.

## What is an Eligible Lease?

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An eligible lease is defined under Section 13 of the *COVID-19 Omnibus (Emergency Measures) Act 2020*. In summary an eligible lease is:

- any lease or license (either retail or non-retail) that was in existence on or before 29 March 2020; and
- where the tenant is a Small and Medium Enterprise (turnover of less than \$50 million); and
- where the tenant is an employer who qualifies for the commonwealth JobKeeper scheme,

(together an “**Eligible Lease**”).

## What do the Regulations mean for tenants of Eligible Leases?

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For tenants, the Regulations set out the way you must seek rent relief from your landlord, the factors that each party must consider during negotiations, how the negotiations must be conducted as well as how disputes that arise during the negotiations will be navigated and resolved.

Tenants should note that in order to be afforded any potential benefit under the Regulations that they must:

- make a written request to the landlord for rent relief;
- the request must be accompanied by a statement that the tenant’s lease is an eligible lease; and
- evidence that the tenant is a SME (Small and Medium Enterprise with annual turnover of less than \$50 mil) and that it qualifies for the JobKeeper Scheme.

From here, the landlord must make the tenant an offer of rent relief within 14 days, or any other period as agreed between the parties. We note that the Regulations deem all information provided in respect of reaching agreement about rent relief to be confidential as set out in Regulation 19.

# COVID-19 & Eligible Leases

## What do the Regulations mean for landlords of Eligible Leases?

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For landlords, firstly, they can expect to receive a written request for rent relief from their tenant with accompanying documentation setting out the tenant's current circumstances and financial hardship.

After receiving the request from the tenant, landlords will need to:

- reply to their tenants within 14 days or another period of time as agreed between the parties with their offer of rent relief;
- offer rent relief that “must be based on all the circumstances of the Eligible Lease”;
- cause relief offered to be up to 100% of the rent (this relief may take the form of a rental waiver, deferral or most likely a hybrid of both);
- have at least 50% of the rent relief in the form of a waiver of rent (i.e. this cannot be recovered by the landlord at a later date);
- prior to making a rent relief offer, consider Regulation 10(4)(d) and take into account the following matters when reaching their offer:
  - (i) the reduction in the tenant's turnover;
  - (ii) any possible waiver of applicable outgoings;
  - (iii) whether failure to offer sufficient rent relief would compromise the tenant's ability to fulfil the ongoing obligations under the lease;
  - (iv) the landlord's financial ability to offer rent relief (i.e. if the landlord has been provided any relief from its lenders or if the landlord is a retiree and reliant on the rent as its income); and
  - (v) any reduction in the outgoings levied on the premises (i.e. if there has been relief provided in respect of council rates, water rates, land tax, etc.).

Once the landlord has made its offer to the tenant, the parties are required to negotiate in good faith, with a view of striking agreement as to the rent relief provided.

Where agreement is reached, the parties should formally document all specifics of the agreement, in particular, ensuring that they either abide by the Regulations or contain specific statements about certain regulations not applying to the lease (which can only apply upon the consent of both parties).

## Regulations of note for all parties

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Both landlords and tenants should take note of the following:

- **Regulation 8** – requires parties to cooperate, act reasonably and in good faith in respect of all discussions and actions associated with the Regulations;
- **Regulation 9** – states that a tenant is not in breach for non-payment of rent between 29 March and 29 September provided they comply with Regulations 10(1)-(5) during this time and that they pay the rent in

# COVID-19 & Eligible Leases

accordance with the variation to the lease made pursuant to Regulation 10(6)(a) or any other agreement under Regulation 10(6)(b).

Further, a landlord cannot evict a tenant or re-enter or otherwise recover a premises for non-payment of rent throughout this time.

Finally, a landlord cannot draw down on any security it holds in respect of non-payment of rent throughout this time.

- **Regulation 10** – sets out the specifics of how rent relief should be sought, when the landlord has to reply, what should be considered, in reaching an agreement in respect of rent relief and the form that an agreement should take. It is summarised in more detail above.
- **Regulation 11** – sets out that further rent relief may be sought by a tenant if its financial circumstances materially change following agreement between the parties.
- **Regulation 12** – prohibits rent increases being applied to the lease from 29 March – 29 September.
- **Regulation 13** – provides that the landlord must offer the tenant an extension to the term of their lease on the same terms and conditions that applied before the commencement of the regulations. The extension of the lease must be for the same period as which rent is deferred. (i.e. if rent is deferred for 6 months, there must be a six month extension of the lease.)
- **Regulation 14** – requires the landlord to consider waiving the recovery of outgoings from the tenant.
- **Regulation 15** – requires the landlord to pass on any reduction in outgoings provided to it.
- **Regulation 16** – sets out how the deferred rent is to be paid. The tenant will have the greater of 24 months or remaining term of the lease to pay back the deferred amount of rent in equal instalments or as otherwise agreed.

For leases that do not have 24 months remaining under the current term, regulation 16 may cause the tenant to pay the deferred rental amount after the lease has ended. The combination of Regulations 13 and 16 seem to mandate that the landlord must offer an extension to the term of the lease to the tenant for the same length of time as rent is deferred **and** allow the tenant at least 24 months to pay the deferred rental amount back (this may mean that a landlord will continue to receive the deferred rental payment after the lease has ended).

The parties can, however, choose not to have this regulation apply but the agreement to waive must be made in writing.

- **Regulation 17** – states that a landlord cannot charge interest or any fees associated with the payment of the deferred rental amount.
- **Regulation 18** – allows for the tenant to reduce trading hours or cease business during the relevant period (29 March to 29 September). The landlord must not terminate the lease on account of the tenant not trading nor can they re-enter the premises. Also, the landlord must not draw down on any security it holds over the lease on account of non-payment of rent.

# COVID-19 & Eligible Leases

- **Regulation 19** – states that protected information (defined at Regulation 19(3)) provided by each party in the course of negotiations is confidential and protected save for the specific instances mention at Regulation 19(2)(a)-(f).
- **Regulations 20 – 23** – sets out the method of dispute resolution as set out in the Retail Leases Act 2003 (i.e. Good faith negotiations between the parties, then Small Business Commissioner mediation, then VCAT hearing).

## Have any questions?

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As you can see above, there is a significant amount for both landlords and tenants to consider in negotiating all COVID-19 temporary agreements.

So, if you are a tenant or a landlord of an Eligible Lease and you have questions about the Regulations or would like guidance in conducting your negotiations, we are here to assist and encourage you to contact Senior Associate, **Jack Sheppard** ([jack.sheppard@abnatoli.com.au](mailto:jack.sheppard@abnatoli.com.au)), to discuss.



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**Version No. 001**  
**COVID-19 Omnibus (Emergency Measures)**  
**(Commercial Leases and Licences)**  
**Regulations 2020**

**S.R. No. 31/2020**

Version as at  
1 May 2020

**TABLE OF PROVISIONS**

<i>Regulation</i>	<i>Page</i>
<b>Part 1—Preliminary</b>	<b>1</b>
1 Objectives	1
2 Authorising provision	1
3 Commencement	1
4 Definitions	1
5 Prescribed turnover	3
6 Prescribed excluded classes of lease	3
7 Prescribed group, relationship or connection	4
<b>Part 2—General obligation on landlords and tenants</b>	<b>5</b>
8 Landlords and tenants must work cooperatively	5
<b>Part 3—Rent, outgoings and other expenses</b>	<b>6</b>
9 Non-payment of rent during relevant period	6
10 Rent relief	7
11 Subsequent rent relief	9
12 Prohibition on rent increases	9
13 Extension of the term	10
14 Recovery of outgoings or expenses	11
15 Reduction in outgoings	11
16 Payment of deferred rent	12
17 No fees, interest or charges	13
<b>Part 4—Change in trading hours</b>	<b>14</b>
18 Tenant may reduce business hours or cease business during relevant period	14
<b>Part 5—Other obligations</b>	<b>15</b>
19 Confidentiality of information	15

<i>Regulation</i>	<i>Page</i>
<b>Part 6—Dispute resolution</b>	<b>17</b>
<b>Division 1—Mediation of eligible lease disputes by Small Business Commission</b>	<b>17</b>
20 Referral of eligible lease dispute for mediation by Small Business Commission	17
21 Legal representation	18
<b>Division 2—Determination of eligible lease disputes by VCAT or court</b>	<b>18</b>
22 Jurisdiction of VCAT	18
23 Determination by VCAT or a court	19
<b>Part 7—General</b>	<b>21</b>
24 Information given by tenant in rent relief request may be used by landlord for applying for tax relief	21
25 Expiry of these Regulations	21
<hr/> <hr/>	
<b>Endnotes</b>	<b>22</b>
1 General information	22
2 Table of Amendments	24
3 Amendments Not in Operation	25
4 Explanatory details	26

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**Version No. 001**  
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## **Part 1—Preliminary**

### **1 Objectives**

The objectives of these Regulations are—

- (a) to implement temporary measures to apply to tenants and landlords under certain eligible leases to mitigate the effect of measures taken in response to the COVID-19 pandemic; and
- (b) to implement mechanisms to resolve disputes concerning eligible leases.

### **2 Authorising provision**

These Regulations are made under section 15 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

### **3 Commencement**

These Regulations are taken to have come into operation on 29 March 2020.

### **4 Definitions**

In these Regulations—

***Commissioner of State Revenue*** means the Commissioner within the meaning of the **Taxation Administration Act 1997**;

***eligible lease dispute***—see regulation 20;

***outgoings*** means a landlord's outgoings on account of any of the following—

- (a) the expenses attributable to the operation, maintenance or repair of—
  - (i) the building or area in which the premises are located or any other building or area owned by a landlord and used in association with the building or area in which the premises are located; or
  - (ii) in the case of premises in a retail shopping centre, any building in the centre or any areas used in association with a building in the centre;
- (b) rates, taxes, levies, premiums or charges payable by a landlord because a landlord is—
  - (i) the owner or occupier of a building or area referred to in paragraph (a) or of the land on which such a building is erected or such area is located; or
  - (ii) the supplier of a taxable supply, within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth, in respect of any such building, area or land;

***premises*** means the premises under an eligible lease;

***relevant period*** means the period—

- (a) commencing on 29 March 2020; and
-

(b) ending on 29 September 2020;

**rent**, in relation to an eligible lease that is a commercial licence, includes the licence fee payable under that licence;

**rent relief** means any form of relief provided to a tenant in respect of the obligation under an eligible lease to pay rent, including a waiver, reduction, remission or deferral of rent;

**security** means anything provided by a tenant or any other person securing the performance of a tenant's obligations under an eligible lease, including a bond, security deposit, indemnity or guarantee;

**the Act** means the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

## **5 Prescribed turnover**

For the purposes of the definition of **turnover** in section 12 of the Act, the things set out in section 5(2)(a) to (g) of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020 of the Commonwealth earned or received by an entity in the most recent financial year are prescribed as turnover.

## **6 Prescribed excluded classes of lease**

For the purposes of section 13(2) of the Act, an eligible lease does not include a retail lease or a non-retail commercial lease or licence under which the premises may be used wholly or predominantly for any of the following activities—

- (a) agricultural, pastoral, horticultural or apicultural activities;

- (b) poultry farming, dairy farming, aquaculture, tree-farming or any business that consists of the cultivation of soils, the gathering of crops or rearing of livestock;
- (c) grazing, including agistment;
- (d) any activity prescribed for the purposes of paragraph (c) of the definition of *farming operation* in section 3 of the **Farm Debt Mediation Act 2011**.

#### **7 Prescribed group, relationship or connection**

- (1) For the purposes of section 13(3)(a) of the Act—
  - (a) a prescribed group is a tenant that is connected, within the meaning of section 328–125 of the Income Tax Assessment Act 1997 of the Commonwealth, with another entity or other entities; and
  - (b) \$50 million is the prescribed amount.
- (2) For the purposes of section 13(3)(b) of the Act—
  - (a) there is a prescribed relationship or connection between a tenant and another entity or other entities if the entity is an affiliate, or the entities are affiliates, within the meaning of section 328–130 of the Income Tax Assessment Act 1997 of the Commonwealth of the tenant; and
  - (b) \$50 million is the prescribed amount.

## **Part 2—General obligation on landlords and tenants**

### **8 Landlords and tenants must work cooperatively**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord and tenant under an eligible lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which these Regulations apply.

#### **Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

## **Part 3—Rent, outgoings and other expenses**

### **9 Non-payment of rent during relevant period**

- (1) A tenant under an eligible lease is not in breach of the eligible lease if they do not pay the amount of rent required to be paid under the eligible lease during the relevant period and only if they—
- (a) comply with regulation 10(1) to (5) during the relevant period; or

**Note**

A tenant under an eligible lease will also need to comply with regulation 10(1) to (5) during the relevant period every time they request rent relief in the circumstances provided for under regulation 11.

- (b) during the relevant period, pay an amount of rent in accordance with—
- (i) any variation to the eligible lease mentioned in regulation 10(6)(a); or
- (ii) any other agreement mentioned in regulation 10(6)(b).

**Note**

An eligible lease has effect subject to subregulation (1)—see section 17(1) of the Act.

- (2) A landlord under an eligible lease must not evict or attempt to evict a tenant under the eligible lease to whom subregulation (1) applies.

Penalty: 20 penalty units.

- (3) A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease if the tenant under the eligible lease is a tenant to whom subregulation (1) applies.

Penalty: 20 penalty units.

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- (4) A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating the non-payment of rent under an eligible lease by a tenant under the eligible lease if the tenant is a tenant to whom subregulation (1) applies.

Penalty: 20 penalty units.

## **10 Rent relief**

- (1) A tenant under an eligible lease may request rent relief from the landlord under the eligible lease.
- (2) A request under subregulation (1) must be in writing and be accompanied by—
- (a) a statement by the tenant that the tenant's lease is an eligible lease and the lease is not excluded from the operation of these Regulations under section 13(3) of the Act; and
  - (b) information that evidences that the tenant—
    - (i) is an SME entity; and
    - (ii) qualifies for, and is a participant in, the jobkeeper scheme.
- (3) On receipt of a tenant's request under subregulation (1) which conforms with subregulation (2), a landlord must offer rent relief to the tenant under an eligible lease within—
- (a) 14 days after receiving that request; or
  - (b) a different time frame as agreed between the landlord and the tenant in writing.
- (4) A landlord's offer of rent relief under subregulation (3) must be based on all the circumstances of the eligible lease and—
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COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020

S.R. No. 31/2020

Part 3—Rent, outgoings and other expenses

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- (a) relate to up to 100% of the rent payable under the eligible lease during the relevant period; and
  - (b) provide that no less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless a landlord and a tenant otherwise agree in writing; and
  - (c) apply to the relevant period; and
  - (d) take into account—
    - (i) the reduction in a tenant's turnover associated with the premises during the relevant period; and
    - (ii) any waiver given pursuant to regulation 14(2); and
    - (iii) whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil the tenant's ongoing obligations under the eligible lease, including the payment of rent; and
    - (iv) a landlord's financial ability to offer rent relief, including any relief provided to a landlord by any of its lenders as a response to the COVID-19 pandemic; and
    - (v) any reduction to any outgoings charged, imposed or levied in relation to the premises.
  - (5) Following receipt of a landlord's offer by a tenant, the tenant and the landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the relevant period.
  - (6) Rent relief under this regulation may be given effect by the landlord and tenant by—
    - (a) a variation to the eligible lease; or
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- (b) any other agreement between them that gives effect to the rent relief, either directly or indirectly.

**Notes**

- 1 An eligible lease has effect subject to this regulation—see section 17(1) of the Act.
- 2 If any part of the rent payable under an eligible lease has been waived under a variation to the eligible lease or under another agreement between the landlord and tenant that gives effect to the rent relief, either directly or indirectly, a landlord will be bound by that variation or agreement and will not be able to subsequently make any claim for payment of the waived part of the rent.

**11 Subsequent rent relief**

- (1) If the financial circumstances of a tenant under an eligible lease materially change after a variation to the eligible lease has been made or an agreement has been reached as mentioned in regulation 10(6)—
  - (a) the tenant may make a further request to the landlord under that lease for rent relief under regulation 10; and
  - (b) subject to subregulation (2), the landlord and the tenant must follow the process set out in regulation 10 in relation to that request.
- (2) A landlord's offer of rent relief need not comply with regulation 10(4)(b).

**Note**

An eligible lease has effect subject to this regulation—see section 17(1) of the Act.

**12 Prohibition on rent increases**

- (1) An eligible lease is taken to provide as set out in this regulation.
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- (2) A landlord under an eligible lease must not increase the rent payable under the lease at any time during the relevant period, unless the landlord and the tenant under the eligible lease agree in writing that this regulation does not apply to their eligible lease.
- (3) Subregulation (2) does not apply to a retail lease to the extent that it provides for rent to be determined by reference to the volume of trade of a tenant's business.

**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

**13 Extension of the term**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) If the payment of any rent is deferred by variation of an eligible lease or an agreement mentioned under regulation 10(6), the landlord under the eligible lease must offer the tenant under the eligible lease an extension to the term of their eligible lease on the same terms and conditions that applied under the eligible lease before the commencement of these Regulations.
- (3) The extension offered under subregulation (2) must be equivalent to the period for which rent is deferred, unless a landlord and a tenant agree in writing that this regulation does not apply to their eligible lease.

**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

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#### **14 Recovery of outgoings or expenses**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord under an eligible lease must consider waiving recovery of any outgoing or other expense payable by a tenant under the eligible lease for any part of the relevant period that the tenant is not able to operate their business at the premises.
- (3) If a tenant under an eligible lease is not able to operate their business at the premises for any part of the relevant period, the landlord may cease to provide, or reduce provision of, any service at the premises—
  - (a) as is reasonable in the circumstances; and
  - (b) in accordance with any reasonable request of the tenant.

##### **Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

#### **15 Reduction in outgoings**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) If any outgoings charged, imposed or levied in relation to the premises are reduced—
  - (a) a landlord under an eligible lease must not require a tenant under the lease to pay any amount in respect of that outgoing that is greater than a tenant's proportional share of the reduced outgoing payable under the lease; and

- (b) if a tenant under an eligible lease has already paid to a landlord under the lease an amount greater than a tenant's proportional share of the reduced outgoing, the landlord must reimburse the excess amount to a tenant as soon as possible.

**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

**16 Payment of deferred rent**

- (1) An eligible lease is taken to provide as set out in this regulation.
  - (2) If any rent is deferred by variation to the eligible lease or an agreement as mentioned under regulation 10(6)—
    - (a) a landlord under the lease must not request payment of any part of the deferred rent until the earlier of—
      - (i) expiry of the relevant period; and
      - (ii) expiry of the term of the eligible lease (before any extension as provided under regulation 13 or otherwise); and
    - (b) a landlord and tenant must vary the eligible lease or otherwise agree so that tenant must pay the deferred rent to the landlord amortised over the greater of—
      - (i) the balance of the term of the eligible lease, including any extension to that term, as provided under regulation 13 or otherwise; and
      - (ii) a period of no less than 24 months.
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- (3) The method by which the deferred rent is amortised for the purposes of subregulation (2) is to be agreed to by the landlord and tenant.
- (4) Subregulation (2) does not apply if a landlord and a tenant agree otherwise in writing.

**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

**17 No fees, interest or charges**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord under the eligible lease must not require a tenant under the lease to pay interest or any other fee or charge in relation to any payment of rent deferred by variation to the eligible lease or an agreement mentioned under regulation 10(6).

**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

## **Part 4—Change in trading hours**

### **18 Tenant may reduce business hours or cease business during relevant period**

- (1) A tenant under an eligible lease is not in breach of the eligible lease if, during the relevant period, they—
- (a) reduce the opening hours of the business they carry out at the premises; or
  - (b) close the premises and cease to carry out any business at the premises.

#### **Note**

An eligible lease has effect subject to subregulation (1)—see section 17(1) of the Act.

- (2) A landlord under an eligible lease must not evict or attempt to evict a tenant under the eligible lease to whom subregulation (1) applies.

Penalty: 20 penalty units.

- (3) A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease if the tenant under the eligible lease is a tenant to whom subregulation (1) applies.

Penalty: 20 penalty units.

- (4) A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating the non-payment of rent under an eligible lease by a tenant under the eligible lease if the tenant is a tenant to whom subregulation (1) applies.

Penalty: 20 penalty units.

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## **Part 5—Other obligations**

### **19 Confidentiality of information**

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord or tenant under an eligible lease must not divulge or communicate protected information obtained under or in connection with the operation of these Regulations except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to a professional adviser who agrees to keep it confidential; or
  - (c) to an actual or prospective financier who agrees to keep it confidential; or
  - (d) as authorised by the Small Business Commission; or
  - (e) as authorised under law; or

#### **Example**

See regulation 24.

- (f) for the purposes of any proceeding in a court or tribunal.
- (3) In this regulation—

***personal information*** means the name, address and contact details of any person (other than the landlord or tenant);

***protected information*** means—

- (a) personal information; or
  - (b) information relating to business processes or financial information (including information about the trade of a business).
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COVID-19 Omnibus (Emergency Measures) (Commercial Leases and  
Licences) Regulations 2020  
S.R. No. 31/2020  
Part 5—Other obligations

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**Note**

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

## **Part 6—Dispute resolution**

### **Division 1—Mediation of eligible lease disputes by Small Business Commission**

#### **20 Referral of eligible lease dispute for mediation by Small Business Commission**

- (1) A landlord or a tenant under an eligible lease may refer a dispute about the terms of the eligible lease arising in relation to a matter to which these Regulations apply (an *eligible lease dispute*) to the Small Business Commission for mediation.
- (2) A referral under subregulation (1) must be in writing.
- (3) The Small Business Commission may, in relation to an eligible lease dispute, perform or exercise any of the functions or powers that the Commission has under the applicable mediation provisions in relation to the eligible lease dispute, and for that purpose, the applicable mediation provisions apply in relation to the eligible lease dispute as if—
  - (a) a reference in the applicable mediation provisions to a retail tenancy dispute were a reference to an eligible lease dispute; and
  - (b) a reference in the applicable mediation provisions to a retail premises lease were a reference to an eligible lease; and
  - (c) a reference in the applicable mediation provisions to a retail premises were a reference to the premises.
- (4) Mediation under this section is not limited to formal mediation procedures. Mediation extends to preliminary assistance in dispute resolution,

such as the giving of advice designed to ensure that—

- (a) the landlord and the tenant are fully aware of their rights and obligations; and
  - (b) there is full and open communication between the landlord and the tenant concerning the matter.
- (5) In referring a dispute under subregulation (1), the parties must not use mediation to prolong or frustrate reaching an agreement.
- (6) In this regulation—

*applicable mediation provisions* means the following provisions under the **Retail Leases Act 2003**, to the extent that they apply to the conduct of a mediation—

- (a) section 84(2), (3) and (4);
- (b) Division 3 of Part 10.

## **21 Legal representation**

- (1) A landlord or tenant may be represented by a legal practitioner in a mediation of an eligible dispute under regulation 20.
- (2) However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the other party) without their legal practitioners who represent them being present.

## **Division 2—Determination of eligible lease disputes by VCAT or court**

### **22 Jurisdiction of VCAT**

- (1) Subject to regulation 23, Division 4 of Part 10 of the **Retail Leases Act 2003** (other than section 89(4)) applies to an eligible lease dispute referred
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to the Small Business Commission under these Regulations as if—

- (a) a reference in that Division to a retail tenancy dispute were a reference to an eligible lease dispute; and
  - (b) a reference in that Division to a retail premises lease were a reference to an eligible lease.
- (2) In making an order in a proceeding relating to an eligible lease dispute, VCAT must also have regard to—
- (a) the matters set out in regulation 10(4)(d); and
  - (b) any certificate issued by the Small Business Commission under regulation 23(1) that mediation under this Part has failed, or is unlikely to resolve the dispute.

### **23 Determination by VCAT or a court**

- (1) An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the Small Business Commission has certified in writing that mediation under Division 1 has failed, or is unlikely to resolve the dispute.
  - (2) An eligible lease dispute may only be the subject of a proceeding in the Supreme Court if—
    - (a) the Small Business Commission has certified in writing that mediation has failed, or is unlikely to resolve the dispute; or
    - (b) the landlord or tenant, as the case requires, has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute.
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- (3) Subregulations (1) and (2) do not—
- (a) apply to a proceeding for an order in the nature of an injunction; or
  - (b) affect the validity of any decision made by VCAT or a court.
- (4) To avoid doubt, nothing in this Part prevents a dispute from being dealt with through a compulsory conference, mediation or any other alternative dispute resolution process under—
- (a) the **Civil Procedure Act 2010**; or
  - (b) rules of court made by the Supreme Court or any practice direction applying to a proceeding in that court; or
  - (c) rules of court made by the County Court or any practice direction applying to a proceeding in that court; or
  - (d) rules of court made by the Magistrates' Court or any practice direction applying to a proceeding in that court; or
  - (e) rules within the meaning of the **Victorian Civil and Administrative Tribunal Act 1998** and any practice direction applying to a proceeding in VCAT.

## **Part 7—General**

### **24 Information given by tenant in rent relief request may be used by landlord for applying for tax relief**

- (1) A landlord under an eligible lease may give the statement and information under regulation 10(2) given to the landlord by a tenant under the lease to the Commissioner of State Revenue for the purpose of applying to be eligible for a tax relief measure in relation to any tax paid or required to be paid by the landlord in relation to the premises.
- (2) In this regulation—

*tax relief measure* has the same meaning as in Part 9A of the **Taxation Administration Act 1997**.

### **25 Expiry of these Regulations**

These Regulations expire on 29 September 2020.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current Versions of legislation and up-to-date legislative information.

The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020, S.R. No. 31/2020 were made on 1 May 2020 by the Governor in Council under section 15 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**, No. 11/2020 and are taken to have come into operation on 29 March 2020: regulation 3.

The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 will expire on 29 September 2020: see regulation 25.

#### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

##### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

##### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

##### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

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COVID-19 Omnibus (Emergency Measures) (Commercial Leases and  
Licences) Regulations 2020  
S.R. No. 31/2020  
Endnotes

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- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and  
Licences) Regulations 2020  
S.R. No. 31/2020  
Endnotes

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**2 Table of Amendments**

There are no amendments made to the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 by statutory rules, subordinate instruments and Acts.

### **3 Amendments Not in Operation**

This version does not contain amendments that are not yet in operation.

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and  
Licences) Regulations 2020  
S.R. No. 31/2020  
Endnotes

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**4 Explanatory details**

No entries at date of publication.