

# Alert

## PROPERTY

# Coronavirus: Commercial Landlords and Tenants

By William Esau & Victoria Malcolm

### What we know so far

While details at this stage are unclear, the Federal Government has announced a moratorium on evictions for the next six months. This moratorium is to be implemented and managed by the States and Territories as each jurisdiction has its own tenancies legislation. As a result, we expect that there will be a slight variation between each jurisdiction. However, the key message is that a moratorium on evictions will be put in place that prevents the eviction of tenants if, as a result of financial distress, tenants are unable to meet their commitments.

The set of principles agreed to by the National Cabinet are as follows:

- a six-month moratorium on eviction for non-payment of rent to be applied across commercial tenancies impacted by severe financial distress due to coronavirus;
- tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
- the reduction or waiver of rental payment for a defined period for impacted tenants;
- the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
- commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
- landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
- cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.

We expect that the details will become clearer as further announcements are made over the coming days.

### What this means for tenants

Does this mean I don't have to pay rent?

Not exactly. The moratorium provides protection from eviction if you are unable to meet your obligations. This is not a 'get out of jail free card'. If you are a thriving business and you do not pay rent during this time that will be in breach of your obligations under your lease and the relevant tenancies legislation. While there may be a delay in a landlord being able to enforce their rights, tenants need to keep in mind that this is a temporary arrangement and that landlords may be entitled to seek damages for such a breach. For example, if you suffer a 20% downturn in trade, is it reasonable for you not to meet any of your rental obligations? Probably not. However, if you are forced to close and cannot trade, the position may be different.

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Essentially, you must continue to pay rent if you can, but there is a safety net if you cannot meet your existing obligations.

### What this means for landlords

Cash flow issues and uncertainty. With the details we have so far, we expect that these will be the most immediately pressing issues that most landlords will face.

As we detailed in our article [‘Federal Government Announces Temporary Changes to Insolvency Laws’](#)<sup>1</sup> the timeframe for companies to respond to statutory demands will increase from 21 days to six months. In addition, the threshold for issuing a statutory demand will be increased from \$2,000 to \$20,000.

With very few options to enforce the obligations of tenants, the banks will play an essential role because the outcome for landlords is set to be determined by the result of their negotiations with the banks.

### Government calls for negotiations

In his announcement on Sunday, Scott Morrison called on tenants, landlords and banks to sit down and negotiate the arrangements that are being put in place. He said:

*“My message to tenants, particularly commercial tenants, and commercial landlords, is a very straightforward one: we need*

*you to sit down, talk to each other and work this out about looking at the businesses which have been closed, businesses that may have had a significant reduction in their revenues.*

*We need landlords and tenants to sit down and come up with arrangements that enable them to get through this crisis, so on the other side, the landlord has a tenant which is a business that can pay rent, and the business is a business that can re-emerge on the other side of this and be able to go on and employ people on the other side of these arrangements.*

*And we want the banks to help them achieve this outcome.”*

### Document, document, document

As always, we encourage our clients to make sure that they continue to document any changes to their existing arrangements in the event of a negotiated outcome.

Oral agreements are undesirable and should be avoided as there is often little supporting evidence as to the terms of such agreements. In the event of a negotiated outcome, the terms must clearly set out the obligations of each party, and it is critical that they are recorded to protect the interests of all of the parties adequately.

It is also essential to remember that negotiated arrangements may be subject to change as the situation evolves and as further details come out.

### Further Updates

We will provide you with further updates as and when new information becomes available. In the meantime, if you would like to discuss your current arrangements with one of our property experts, please contact us via the details provided below.



**MORE INFO**

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1. <https://www.dwfoxtucker.com.au/2020/03/federal-government-announces-temporary-changes-to-insolvency-laws/>

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