



**Victorian
Small Business
Commission**

Supporting small business during coronavirus (COVID-19)

Judy O'Connell

Victorian Small Business Commissioner



We are here for small business

- The Victorian Small Business Commission (VSBC) is an independent government agency.
- We're here to advocate on issues affecting small business, raise awareness of your rights and responsibilities, and help you to avoid or resolve disputes.
- Whether you're a small business or a supporter of one, we're here to help.



Business disputes

Disputes concerning any commercial agreement between business-to-business/government or not-for-profit

- Disputes with **financial providers or insurers**
- Disputes over **undelivered goods and services** or the **quality of goods and services**
- Disputes over **non-payment of suppliers**

No definition of 'small business'

Commercial Tenancy Relief Scheme

The Victorian Government introduced the CTRS to alleviate financial hardship faced by commercial tenants as a result of coronavirus

- **Six-month moratorium** on evictions for not paying rent for SMEs and a freeze on rent increases during the moratorium
- Rent relief in the form of a **rent payment waiver or deferral**
- **Free mediation** for commercial tenants and landlords, accessed through the VSBC, to support fair tenancy negotiations

Commercial Tenancy Relief Scheme

Regulations relate to 29 March – 29 September 2020

To participate in CTRS the tenant needs:

- **to be eligible and participate in the JobKeeper scheme** – evidence is the confirmation form received by the ATO
- to confirm they are an **SME** earning a **turnover of less than \$50m**.



Commercial Tenancy Relief Scheme

Working out their financial situation

A tenant should work out how much their turnover has reduced in this financial year by:

- comparing their actual turnover for March 2020 with March 2019 or
- comparing likely turnover for the April to June quarter with actual sales in that quarter in 2019.

The tenant needs to provide evidence of the reduction in turnover:

- extracted from an accounting system or BAS
- provided to a financial institution.

Commercial Tenancy Relief Scheme

- The **tenant** must make a written request to the landlord.
- The landlord then has 14 days to make an offer of rent relief.
- Tenants can use the VSBC's **letter template** to guide them in requesting rent relief.

Dear [LANDLORD]

I write in relation to my lease at [ADDRESS]. The purpose of this [email/letter] is to formally request rent relief from you under the Commercial Tenancy Relief Scheme (the Scheme).

The Scheme was introduced by the Victorian Government to alleviate financial hardship faced by tenants and landlords as a result of the coronavirus (COVID-19) pandemic. Legislation for the Scheme is detailed in the [COVID-19 Omnibus \(Emergency Measures\) Act 2020](#) and related [Regulations](#). You can access these and find information about your rights and obligations in relation to the Scheme on the Victorian Small Business Commission's [web page for tenants and landlords](#).

There are certain steps that must be followed to progress a request for rent relief as a result of the coronavirus pandemic. These steps are outlined in section 10 of the Regulations. In keeping with these steps, I confirm that:

- the lease is an eligible lease
- [BUSINESS NAME] is an SME entity – information showing this is **attached** and
- [BUSINESS NAME] qualifies for and is a participant in the JobKeeper scheme – information showing this is **attached**.

In addition, please note that:

- since restrictions in response to coronavirus came into effect, my business has experienced a [X] per cent reduction in turnover. I have **attached** information that demonstrates this.

I am requesting a [X] per cent reduction in my rent between [DATE] and [DATE], taking into consideration that the Scheme runs from 29 March 2020 to 29 September 2020.

Under my calculations, this amounts to a reduction of \$[X] per month, bringing my monthly repayments to \$[X]. I request that [X] of this relief be applied as a waiver and [X] be a deferral.

I request that you reply to this letter with a suitable offer as soon as possible.

I hope we can come to an agreement that is suitable for to both of us.

Thank you.

[TENANT]

VSBC website > Your rights and responsibilities > Commercial tenants

Commercial Tenancy Relief Scheme

The landlord must take into account factors such as:

- the tenant's reduction in turnover
- the landlord's financial capacity
- the tenant's capacity to fulfil the obligations under the lease i.e. if the tenant will be able to pay the rent and outgoings
- any waiver or reduction of outgoings.

Scenario 1

No less than 50 per cent of the rent relief offered by the landlord must be in the form of a waiver of rent

Scenario: suburban café

- Tenant Joe owns a café and pays \$1000 per month in rent.
- Joe's takings have reduced by 50 per cent and he has requested a \$500 monthly reduction in rent.
- The landlord's response is a \$250 rent waiver and \$250 rent deferral per month.
- Both agree and sign a written agreement.

Scenario 2

Scenario: fish shop in Melbourne's CBD

- Tenant Fred who owns a fish shop pays \$1000 per month in rent.
- Fred's takings have reduced by 50 per cent and he has requested a \$500 monthly reduction in rent.
- The landlord's response, taking into account her financial capacity and the tenant's capacity, has suggested a \$125 rent waiver and \$125 rent deferral per month.
- Fred disagrees and they apply to the VSBC for help in resolving their rent dispute.

What if I can't reach an agreement?

- To apply for help in resolving the dispute go to www.vsbc.vic.gov.au.
- You will need to include a copy of your lease and evidence that you are participating in the JobKeeper scheme.
- A case officer will contact you to seek relevant information and arrange a time for mediation.
- Mediation is conducted remotely by an independent mediator.
- If parties reach agreement they enter into binding Terms of Settlement.
- If an agreement can't be reached the dispute goes to VCAT or the Courts.

Where businesses aren't covered

Businesses that aren't covered but need help in resolving rent disputes

- The VSBC is still offering a dispute resolution process to help.
- The National Cabinet Mandatory Code of Conduct for SMEs in relation to commercial leasing principles during COVID-19 was endorsed by the Federal Government.
- The Code should be used as a guide by the tenant and landlord.
- Mediation allows for a safe environment where parties can be reminded of the Code, discuss their differences and recognise that genuine hardship has occurred.

What if the tenant doesn't pay rent?

Is a tenant in breach of their lease if they don't pay rent during the relevant period?

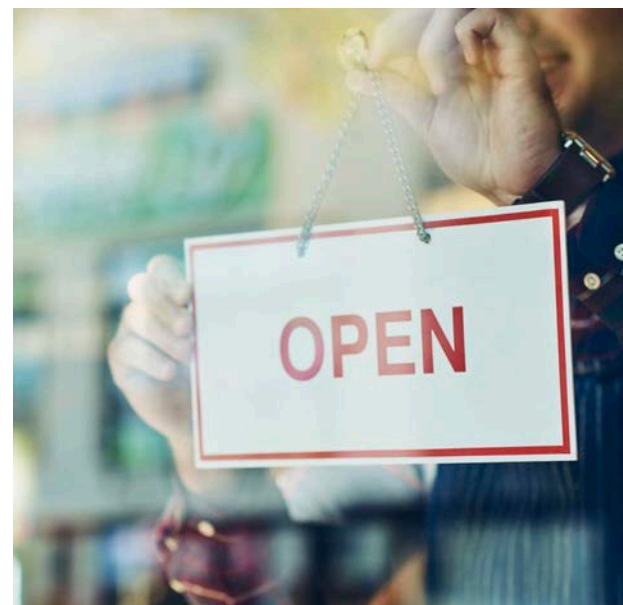
A tenant under an eligible lease isn't in breach of that lease if they don't pay the required rent during the relevant period only if:

- the **process for requesting rent relief has been followed** or
- during the relevant period the **tenant pays an amount of rent in accordance with any variation to the eligible lease** or any other agreement that gives effect to rent relief either directly or indirectly.

Can a tenant reduce hours or close?

Can a tenant reduce opening hours or close their business even though they could keep trading by using another form of business e.g. take-away or click and collect?

A tenant under an eligible lease is not in breach of the lease if they reduce opening hours or close the business and cease to carry out any business at the premises.



Can a tenant be evicted?

Can a tenant under an eligible lease be evicted for not paying rent or reducing opening hours or closing their business during the relevant period?

If the tenant has followed the process for requesting rent relief and during the relevant period had paid an amount agreed to with the landlord, the landlord must not:

- evict or attempt to evict a tenant
- re-enter or otherwise recover or attempt to re-enter or otherwise recover the premises.

Can rent be increased?

If a tenant's situation improves, can rent be increased during the relevant period, including after an agreement is reached?

A landlord under an eligible lease must not increase the rent payable at any time during the relevant period, unless the landlord and tenant agree in writing that the regulation preventing a rent increase doesn't apply to their lease.

Can a landlord cease services?

Can a landlord stop providing services at the premises?

If a tenant isn't 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 as is reasonable in the circumstances and in accordance with any reasonable request of the tenant.



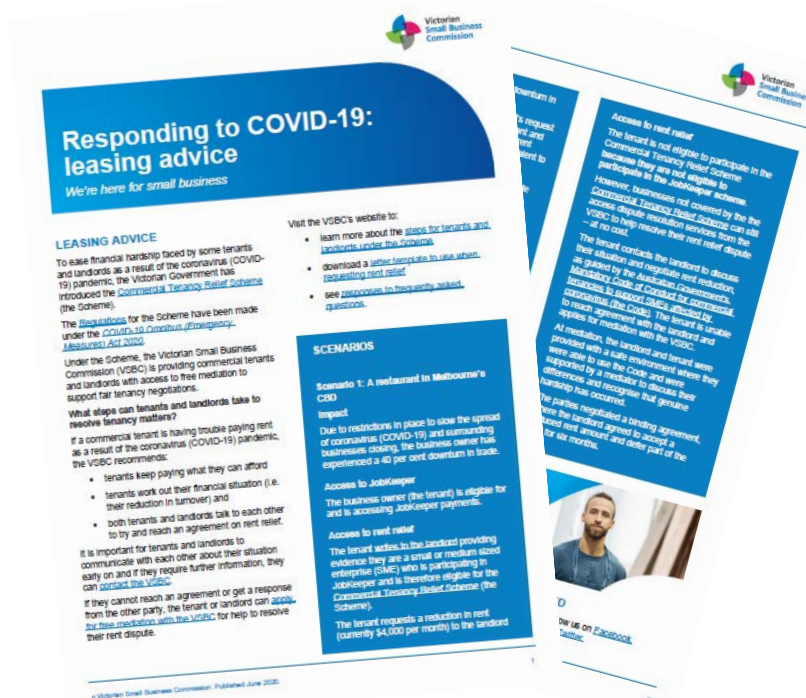
Disputes – 19 June 2020

- 5,245 enquiries
- 720 rent related dispute applications
 - 683 relate to the Commercial Tenancy Relief Scheme (the Scheme), 37 were where the tenant was ineligible for the Scheme
- 127 cases finalised (in 122 of these, rent relief was successfully negotiated)
- 80 per cent finalised early on without needing mediation
- Time taken to finalise: 3.5 weeks or 5 weeks if mediation is needed

Expanding our translations

In response to coronavirus the VSBC has developed a new fact sheet for small business tenants and landlords with leasing advice in:

- **Simplified Chinese**
- **Arabic**
- **Vietnamese.**



VSBC website > Your rights and responsibilities > Commercial tenants

Government support

- A range of assistance is available from the Australian and Victorian governments and other entities to support businesses impacted by coronavirus.
- The Business Victoria website has an online coronavirus business support and financial assistance finder, which can help you find the assistance you need based on your circumstances.



www.business.vic.gov.au

Business Victoria > Disputes, disasters and succession > Coronavirus (COVID-19)

Looking after your mental health

We've developed a guide to creating a mental health plan to help small business owners to look after their wellbeing at this time

They can use it to help:

- identify your stressors
- recognise changes in yourself that signal you might need extra support
- plan practical steps you can take in response.



Responding to
coronavirus (COVID-19):
**A small business
owner's guide to
creating a mental
health plan**



Victorian
Small Business
Commission

Mental health plan: Alex Smith

01 Stressors – business and personal

What do I find really challenging at the moment?

My stressors	What I can do now to stop them from happening
<ul style="list-style-type: none"> — Knowing which government supports I can access and what I need to do to look after my staff — Not being able to visit family and friends — Trying to pay rent when I have far fewer customers — Adapting to working from home 	<ul style="list-style-type: none"> — Call Business Victoria (13 22 15) to find out if I can apply for the Business Support Fund — Try using Skype and FaceTime instead of calling — Call my landlord to talk about my situation and if they don't agree to negotiate rent relief, visit the VSBC's website for help — Read about working from home safely and productively

02 Mental health red flags

What changes in me help me to know I might need support?

My flags	Actions I can take when they happen
<ul style="list-style-type: none"> — Not being able to sleep properly — Thinking it's all too much — Feeling anxious 	<ul style="list-style-type: none"> — See my doctor — Talk to a counsellor — Go for an early jog each morning

03 Support people and resources

Which trusted contacts can I turn to for help?

My supports	Steps I'll take now
<ul style="list-style-type: none"> — Doctor, Lifeline (13 11 14), Beyond Blue — Business Victoria, business mentor — DHHS 	<ul style="list-style-type: none"> — Access Beyond Blue's support service — Call my mentor — Bookmark DHHS's web page and get across their FAQs

04 If I need to take time out

What I can do	How I'll plan for this now
<ul style="list-style-type: none"> — Ask Fran to run the business until I get back — Draw on available supports (e.g. tax relief, Centrelink) 	<ul style="list-style-type: none"> — Speak with Fran — Visit the Business Victoria website

05 Returning to work after taking time out

How I can do this and support my mental health	How I'll plan for this now
<ul style="list-style-type: none"> — Cut back to 2 days a week for the first few weeks — Keep connected 	<ul style="list-style-type: none"> — Talk to the team about my plan — Reconnect with SANE's lived experience forum

Tips for mental wellbeing

- Stay connected with friends via FaceTime or talking on the phone
- Keep fit through daily walks or online workout classes
- Get accurate information on business supports from Business Victoria and advice and updates on coronavirus from DHHS:

www.business.vic.gov.au www.dhhs.vic.gov.au/coronavirus

- Access Beyond Blue's coronavirus support service for information on managing your wellbeing, access to trained counsellors 24/7 and tips on looking after yourself when working from home:

coronavirus.beyondblue.org.au

We're here to help



Website

vsbc.vic.gov.au



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