

Victorian Small Business Commission FAQs

Rent relief and dispute resolution under the Victorian Government's Commercial Tenancy Relief Scheme, which ended on 28 March 2021

1. What support is available to landlords and tenants who have been impacted by restrictions in response to coronavirus (COVID-19)?

The Victorian Government introduced the Commercial Tenancy Relief Scheme to relieve financial hardship faced by commercial tenants and landlords as a result of coronavirus.

The Scheme has been further extended until 28 March 2021.

The Scheme provides:

- a moratorium until 28 March 2021 on evictions for not paying rent for small to medium enterprises (SMEs):
 - with an annual aggregate turnover under \$50m and
 - that have had a minimum 30 per cent reduction in turnover because of coronavirus, starting from 29 March 2020
 - where the tenant has followed the process under the Scheme for applying for rent relief
- a freeze on rent increases during the moratorium
- rent relief provided by commercial landlords that is in proportion to (i.e. matches) their tenant's reduction in turnover because of coronavirus and is made up of a minimum 50 per cent rent waiver (the remainder can be made up of a rent deferral)
- a free mediation service for commercial tenants and landlords, accessed through the Victorian Small Business Commission (VSBC), to resolve disputes over rent relief
- the option for commercial tenants to apply to the VSBC for a binding order for rent relief if their landlord fails to respond to the VSBC or doesn't engage in mediation in good faith.

Small business tenants seeking rent relief from 1 January 2021 to 28 March 2021 will need to apply to their landlord in writing with evidence of their eligibility as soon as possible, as a landlord is only required to provide rent relief from the date they do this.

If a tenant has already made a request and is seeking further rent relief for this extended period, then they will need to make another request to their landlord, supplying the required evidence.

Regulations for the extended Scheme have been made under the COVID-19 Commercial and Residential Tenancies Legislation Amendment (Extension) Act 2020. These regulations create temporary requirements for landlords and tenants during the Scheme.

For more information, see the Victorian Government's policy guidance.

2. What is the difference between the National Mandatory Code and the regulations for Victoria's Commercial Tenancy Relief Scheme?

The National Mandatory Code provides leasing and guiding principles for each state and territory to use in making laws to give effect to rent relief and a moratorium on evictions. In Victoria, the regulations for the Commercial Tenancy Relief Scheme gave effect to the Code.

3. Are commercial tenancies covered by the Commercial Tenancy Relief Scheme (the Scheme) after 29 September 2020?

Yes. Commercial tenancies are covered by the Scheme, which has been further extended until 28 March 2021. Eligible tenants should contact their landlord about extended or new arrangements.

4. Are sole traders eligible to take part in the Commercial Tenancy Relief Scheme?

Yes. Sole traders who take part in the Australian Government's JobKeeper scheme will be eligible to take part in the Victorian Government's Commercial Tenancy Relief Scheme from the date they apply to their landlord for rent relief until 28 March 2021.

5. What if a tenant can't keep paying rent because of coronavirus (COVID-19)?

If a tenant is having trouble paying rent because of coronavirus, the Victorian Small Business Commission (VSBC) recommends they:

- keep paying what they can afford
- write to their landlord as soon as possible to communicate their situation and provide details of the reduction in their turnover
- follow the process for tenants and landlords to try to reach an agreement on rent relief through negotiating in good faith.

It is important to do this without delay because the tenant can only receive rent relief from the date they make a request to their landlord in writing. Tenants can use the VSBC's letter template to guide them in requesting rent relief.

If anything is unclear to a tenant or landlord or if they have concerns, they can contact the VSBC for help. If they cannot reach an agreement, they can apply to the VSBC for help in resolving their rent dispute through free mediation.

6. What does negotiating 'in good faith' mean?

It involves all parties communicating with each other and having discussions honestly and fairly with the genuine intention of reaching an agreement. It also involves behaving in an open and transparent manner and providing sufficient and accurate information within the context of negotiations.

Under the Commercial Tenancy Relief Scheme (the Scheme), landlords and tenants are required to co-operate and act reasonably in all of their discussions and actions and to negotiate rent relief in good faith with a view to reaching an agreement. They are also required to provide relevant documentation (consistent with the regulations for the Scheme) in a timely manner.

In certain circumstances, the Victorian Small Business Commission (VSBC) may make a binding order for rent relief if a landlord does not engage in mediation in good faith.

7. Under what circumstances can a landlord evict a tenant under the Commercial Tenancy Relief Scheme (the Scheme)?

A landlord cannot evict a tenant who is eligible under this Scheme if the tenant is unable to pay rent because of a fall in turnover due to coronavirus (COVID-19). A tenant whose lease was in effect on, or before, 29 March 2020 cannot be evicted if they have requested rent relief from their landlord and have attempted to negotiate in good faith, in line with the [regulations for the Scheme](#).

The moratorium on evictions does not cover circumstances of eviction that fall outside of the regulations. For example, evictions relating to:

- damaged property
- unpaid rent before 29 March 2020
- situations where a tenant does not pay rent that they had agreed to pay under a rent relief agreement.

The moratorium does not cover tenants who are not eligible under this Scheme, including situations where a tenant is no longer eligible (e.g. if they no longer qualify for JobKeeper).

8. Is support available to a landlord who provides rent relief to their tenant?

Landlords who have provided rent relief in 2020 to an eligible tenant can apply to the [State Revenue Office](#) for up to a 50 per cent land tax waiver on each eligible property and a deferral of the remaining land tax liability until 31 March 2021.

In addition, land tax relief is being extended to the 2021 land tax year. Landlords who provide rent relief to eligible tenants between 1 January 2021 and 28 March 2021 may be eligible for:

- a land tax discount of 25 per cent on their associated 2021 land tax and
- the ability to defer the remainder of their land tax liability until 30 November 2021.

Owners of a commercial property who run a small to medium business from that property and whose business has been impacted by the pandemic may be eligible to receive a 25 per cent reduction on the property's 2020 and 2021 land tax liability and a deferral of the remaining land tax to 30 November 2021.

In addition, the Victorian Government has launched the Commercial Landlord Hardship Fund Round 2. Grants of up to \$3,000 per tenancy are available to eligible small landlords who reduce commercial rent for their tenants under the Commercial Tenancy Relief Scheme. Full program guidelines and information on how to apply are available on Business Victoria's website.

9. Are landlords required to provide proportional rent relief to eligible tenants?

Yes. A landlord's rent relief offer must, at a minimum, be in proportion to the decline in the tenant's turnover. For example, if the tenant's turnover has fallen by 40 per cent (using the comparison period in question 35) the required rent relief is at least 40 per cent of the tenant's current rent.

At least 50 per cent of the rent relief offered must be made up of a rent waiver. This means the rent relief cannot be made up of a rent deferral only.

10. What is the period during which a landlord must provide proportional rent relief to their tenant?

A landlord's proportional rent relief offer must apply from the date their tenant applied for rent relief during the period 29 September 2020 to 28 March 2021.

11. What if rent relief that had previously been negotiated is not in proportion to the tenant's reduction in turnover?

Rent relief agreements already in place will continue as agreed. A tenant can request further rent relief in proportion to their reduction in turnover from the date of their further application after 1 January 2021 to 28 March 2021.

12. Is the Victorian Small Business Commission (VSBC) currently providing mediation services?

Yes, mediation services are being conducted via videoconferencing and teleconferencing at no cost to commercial tenants and landlords. You can apply for mediation via the VSBC's [applications web page](#).

13. How much will mediation cost for businesses that are already in financial distress?

There will be no cost to small business tenants or their landlords for mediation to help resolve a dispute over rent relief. You can apply for mediation via the Victorian Small Business Commission's [applications web page](#).

14. How can a landlord and tenant resolve a dispute?

If a landlord and tenant need help to resolve a dispute about rent relief, either the landlord or tenant can apply to the Victorian Small Business Commission (VSBC) for help.

Help includes assistance early on, often just over the phone, and where disputes cannot be resolved this way, access to free mediation. At mediation, an experienced and independent mediator will guide both parties in fair tenancy negotiations with the aim of reaching an outcome that both parties can accept.

15. When applying for mediation, what are the meanings of the terms 'applicant' and 'respondent'?

The 'applicant' is the person, business or company applying for mediation. The 'respondent' is the person, business or company receiving the application for mediation (i.e. the person, business or company that the applicant is in a dispute with).

16. Is the information provided by a landlord or tenant during the dispute resolution process protected by confidentiality?

Yes, a landlord or tenant must not divulge personal information, information relating to business processes or financial information (including information about the business owner's trade) except where permitted by the [regulations for the Commercial Tenancy Relief Scheme](#).

17. Is mediation binding?

If a landlord and tenant reach agreement at mediation, they can sign binding Terms of Settlement. If a party to an agreement does not meet their obligations, the other party may be able to take action at the Victorian Civil and Administrative Tribunal (VCAT) to enforce the agreement. If a tenant breaks an agreement to pay agreed rent relief, they may be at risk of being evicted by the landlord.

18. If a dispute cannot be resolved at mediation can it be determined by the Victorian Civil and Administrative Tribunal (VCAT) or a court?

If a dispute about a lease cannot be resolved at mediation, a landlord or tenant can apply to VCAT or a court to determine the dispute. A lease dispute (other than an application for an order in the nature of an injunction) can only be the subject of a proceeding in VCAT or a court if the Victorian Small Business Commission (VSBC) has certified in writing that mediation failed or is unlikely to resolve the dispute.

19. What if a landlord refuses to negotiate?

Under the Commercial Tenancy Relief Scheme, commercial tenants and landlords can access free mediation through the Victorian Small Business Commission (VSBC) to help resolve a dispute over rent relief.

From 29 September 2020 the VSBC can make a binding order for rent relief if the landlord does not respond to a dispute notice from the VSBC or does not mediate in good faith, where the VSBC considers this decision to be fair and reasonable in all circumstances.

The VSBC can also issue a certificate that enables the dispute to proceed to the Victorian Civil and Administrative Tribunal (VCAT). VCAT is then able to make a determination on the rent relief dispute.

Commercial tenants can apply for the VSBC's help to resolve their dispute.

20. What if a tenant refuses to negotiate or keep paying rent?

The landlord can apply to the VSBC for help. Help includes assistance early on, often just over the phone, and where disputes can't be resolved this way, access to free mediation.

At mediation, an experienced and independent mediator will guide both parties in fair tenancy negotiations with the aim of reaching an outcome that both parties can accept.

For information on whether a tenant is in breach of their lease for not paying rent, see question 47. For information on whether a tenant can be evicted for not paying rent, see question 50.

21. What is rent relief?

Rent relief is any form of relief provided to a tenant in relation to their obligation under a lease to pay rent. It can take the form of a rent waiver, reduction, remission or deferral.

From the date the tenant applies to the landlord after 29 September 2020, a landlord's offer of rent relief must:

- be in proportion to their tenant's reduction in turnover
- be based on all the circumstances of the lease and

- relate to up to 100 per cent of the rent payable up to 28 March 2021.

At least 50 per cent of the rent relief offered must be in the form of a rent waiver, unless the landlord and tenant reach a different agreement in writing.

22. What is a rent waiver?

A rent waiver is where the landlord and tenant agree that the landlord will not collect the rent or part of the rent owed for an agreed period of time. Rent that is waived is never repaid.

23. What is a rent remission?

A rent remission means the cancellation of a debt or charge, such a landlord agreeing not to seek payment of rent that was owed but has not been paid (rent arrears).

24. What is a rent deferral?

A rent deferral is where the tenant and landlord agree that the tenant will pay the rent or part of the rent owed at a later date over an agreed period of time (i.e. payment is postponed).

25. If an agreement is reached to defer rent, when is that rent payable?

A landlord and tenant must vary the lease or agree that the tenant will pay the deferred rent over the remaining term of the lease or 24 months, whichever is greater. The remaining term includes any negotiated extension to the lease.

If any rent is deferred by variation to the lease or agreement between the landlord and tenant, the landlord must not request payment of the deferred rent until 28 March 2021.

26. What does 'proportional reduction in rent' mean?

It means rent relief that matches the decline in the tenant's turnover. A landlord must provide proportional rent relief to their tenant:

- from the date of the tenant's written application to the landlord with the required evidence on or after 29 September 2020, then
- until 28 March 2021.

At least 50 per cent of the rent relief offered must be in the form of a rent waiver unless the landlord and tenant reach a different agreement in writing.

27. What is the period during which rent relief must be provided?

The period for which rent relief must be provided is from the date of the tenant's written application to the landlord within the period 1 January 2021 to 28 March 2021. This includes applications for new and further rent relief.

28. Can a tenant apply for rent relief on rent that is due before 29 September 2020?

A tenant can only apply for rent relief from the date they apply to their landlord in writing between the period 29 September 2020 to 28 March 2021. Agreements made before 29 September 2020

still apply, though tenants can seek further rent relief for the period 29 September to 28 March 2021.

29. Do the regulations apply to leases entered into after 29 March 2020?

No. The COVID-19 Omnibus (Emergency Measures) Act 2020 states that an eligible lease is one that was in effect on the day the regulations for the Commercial Tenancy Relief Scheme came into effect. If a lease was not in effect on or before 29 March 2020, these regulations will not apply.

30. What is an 'eligible lease'?

An eligible lease is a retail or non-retail commercial lease or licence under which the tenant (which includes licensees) is an operator of a small to medium enterprise who takes part in the JobKeeper scheme. Some farming and agricultural leases are not included.

31. What is not an eligible lease?

Leases that are not eligible include:

- some farming and agricultural leases
- leases where the tenant is a member of (or has a connection with) a group of entities prescribed under the *Income Tax Assessment Act 1997* that has an aggregate turnover over \$50m.

32. Can a tenant who is not under an eligible lease apply for rent relief and assistance from the Victorian Small Business Commission (VSBC)?

Yes. The VSBC offers a dispute resolution process, which includes a mediation service to assist businesses that need help in resolving rent relief disputes.

Where a tenant is not under an eligible lease, the Australian Government's Mandatory Code of Conduct for commercial tenancies to support SMEs affected by coronavirus (COVID-19) (the Code), which is endorsed by the Victorian Government, should be used as a guide by the tenant and landlord. The requirement to negotiate in 'good faith' means landlords and tenants should genuinely cooperate to reach agreement (see question 6).

At mediation, parties can be reminded of the Code, encouraged to discuss their differences in a safe environment and recognise that genuine hardship has occurred, in accordance with the Code.

33. When requesting rent relief, what document does a tenant need to show to prove they participate in the JobKeeper scheme?

A tenant will need to provide the following two pieces of evidence to verify that they are entitled to a JobKeeper payment under the JobKeeper Rules:

1. Their Business Registration for JobKeeper Wage Subsidy ATO receipt number, which can be requested from the ATO's call centre and
2. A copy of their most recent notice to the ATO under the JobKeeper Rules

Examples of the information a tenant can provide (depending on the number of employees) and the ATO receipt that they receive after submitting that information can be found [here](#) (please note: a tenant should blank out private details including tax file numbers and employee names before providing this information to their landlord).

34. How is 'turnover' defined?

Turnover is defined as the annual turnover of a small to medium enterprise for a financial year. It is the total of:

- the proceeds of sales of goods and/or services
- commission income
- repair and service income
- rent, leasing and hiring income
- government bounties and subsidies
- interest, royalties and dividends
- other operating income.

Turnover does not include JobKeeper payments. However, payments such as Victorian Government Business Support Fund payments are included in reportable or assessable turnover. Turnover does not include GST.

35. How is a decline in turnover calculated? Turnover is calculated using the [actual decline in turnover test](#), as defined in the JobKeeper Rules.

A tenant can compare GST turnover for the quarter ending 31 December 2020 (October, November and December 2020) with the corresponding period in 2019.

To work out actual turnover, tenants need to use a cash or accruals basis. However, they must use the same method for both periods. This means that if they used a cash basis to work out turnover for the quarter ending 31 December 2020 (October, November and December 2020), they would need to use a cash basis to work out turnover for the quarter ending 31 December 2019 (October, November and December 2019).

The ATO offers [further guidance in calculating turnover](#).

36. Should payments received under the JobKeeper scheme be included in turnover calculations?

Payments that a tenant receives from taking part in the JobKeeper scheme cannot be included in turnover calculations, as turnover does not include any coronavirus (COVID-19) economic response payments, including JobKeeper payments.

37. How does a business that has traded for less than 12 months calculate a reduction in turnover?

The ATO offers information on an [alternative test](#) that can be taken by businesses that have traded for less than 12 months.

38. How does a tenant request rent relief?

When a tenant requests rent relief from their landlord, the request must be in writing and be accompanied by:

- a statement confirming that the tenant's business is a small to medium enterprise
- a statement that the tenant's lease is an eligible lease and is covered by the Commercial Tenancy Relief Scheme
- evidence that the tenant is taking part in the JobKeeper scheme (question 33 lists the two pieces of evidence that must be supplied)
- a statement of the tenant's decline in turnover associated with the premises and expressed as a whole percentage, relevant to the period for which they are requesting rent relief that includes at least one of the forms of evidence listed in question 39.

Tenants can use the Victorian Small Business Commission's letter template to guide them in requesting rent relief from their landlord.

39. What evidence is required to show a reduction in turnover?

A tenant needs to provide evidence of at least one of the following to their landlord to show a decline in turnover:

- extracts from the tenant's accounting records or
- the tenant's business activity statement(s) that relate to the relevant turnover test period (providing the GI information – total sales – highlighted in the ATO's form) or
- statements issued by an authorised deposit-taking institution (e.g. a bank) that relate to the tenant's account or
- a statement prepared by a practising accountant.

40. What turnover information is not appropriate for a landlord to request from a tenant to help inform their offer of rent relief?

A landlord should not:

- request future cash flow projections
- request balance sheets, profit and loss or year to date financials
- request the tenant's bank balance
- require the financial information to be verified, examined, assured, audited or provided by a third party such as an accountant
- require an accountant to provide a letter of comfort or similar on the financial information
- request financial information for periods other than the 'relevant period' (i.e. the period nominated by the tenant as the period for a reduction in turnover).

41. What does a landlord need to do to respond to a tenant's request for rent relief?

A landlord must offer rent relief to an eligible tenant within 14 days after the tenant has made a written request unless a different time frame has been agreed to by the landlord and tenant in writing.

An offer of rent relief must relate to up to 100 per cent of the rent payable under the lease and must, at a minimum, be in proportion to the decline in the tenant's turnover during the most recent turnover test period (see question 35) and apply from the date of the tenant's written request to the landlord made after 29 September 2020 until 28 March 2021. At least 50 per cent of the rent relief offered must be in the form of a rent waiver unless the landlord and tenant reach a different agreement in writing.

42. Do landlords and tenants need to negotiate rent relief after the landlord makes an offer?

Once a tenant has received the landlord's offer, the landlord and tenant must continue to negotiate in good faith with the aim of reaching agreement on rent relief for the relevant period (see question 6).

43. Does a landlord's rent relief offer need to directly equal a reduction in turnover?

A landlord's offer of rent relief must, at a minimum, be:

- in proportion to the decline in the tenant's turnover during the most recent turnover test period
- based on all the circumstances of the lease
- applied to the period from the date the tenant applies to the landlord in writing after 29 September 2020 to 28 March 2021, taking into account:
 - any waiver or reduction of outgoings provided by the landlord to the tenant
 - any waiver or reduction of outgoings or other expenses for the premises provided by other parties (e.g. water company or council)
 - whether the tenant's capacity to pay rent under the lease would be compromised by not being offered sufficient relief.

44. Can a tenant ask for more rent relief after an agreement has been made?

A tenant can ask for more rent relief if they have reached an agreement for rent relief with their landlord and:

- their financial circumstances have materially changed or
- the agreement or variation to the lease was made before 29 September 2020 and does not comply with the minimum requirement to be in proportion to the tenant's reduction in turnover or
- the rent relief does not apply to the whole of the period from the date the tenant applies to 28 March 2021.

After a further request for rent relief has been made, a landlord and their tenant must follow the process for tenants and landlords.

45. Can rent be increased during the relevant period (including after an agreement has been reached) if the tenant's situation improves?

A landlord must not increase the rent payable at any time from 29 March 2020 to 28 March 2021, unless the landlord and tenant agree in writing that the regulation preventing a rent increase does not apply to their lease. This restriction does not apply to a retail lease where the lease allows rent to be determined by the tenant's volume of trade.

46. If rent is deferred, is the lease extended?

If payment of any rent is deferred by variation of a lease or other agreement between a landlord and tenant, the landlord must offer the tenant an extension to their lease equal to the length of time for which rent is deferred. This extension must be on the same terms and conditions that applied under the lease before the [regulations for the Commercial Tenancy Relief Scheme](#) were implemented.

47. Is a tenant in breach of their lease if they do not pay rent during the relevant period?

A tenant is not in breach of the lease if they do not pay the required rent during the relevant period providing:

- the [process for requesting rent relief](#) has been followed *or*
- during the relevant period the tenant pays the amount of rent in line with any variation to the lease or any other agreement that provides rent relief either directly or indirectly (e.g. where the landlord has agreed to provide a service or carry out work for the tenant).

48. Can a small business tenant end their lease early?

A lease is a legally binding agreement. By signing it, the landlord and tenant have agreed that the tenant will lease the retail or commercial premises for the period of time specified in the lease.

Usually a lease can't be broken early by the landlord or tenant, unless the lease allows for this to happen.

Some tenants who are experiencing a downturn in trade might be wanting to end their lease early. We encourage tenants in this situation to communicate with their landlord as early as possible to discuss their position and alternative options, such as rent relief. [Learn more about ending a lease early.](#)

49. Can a tenant reduce opening hours or close their business even though they could keep trading in another way e.g. takeaway or click and collect?

A tenant is not in breach of the lease if they reduce opening hours or if they close their business and stop carrying out business at the premises.

50. Can a tenant be evicted for not paying rent or outgoings or for reducing opening hours or closing their business during the relevant period?

If a tenant has followed the [process for requesting rent relief](#) and is paying the amount of rent and outgoings agreed to with the landlord, the landlord must not:

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

If the landlord breaches either of the above requirements, they can be fined \$3,304.40.

51. Can a tenant apply for mediation if they do not qualify for JobKeeper?

Yes. The Victorian Small Business Commission (VSBC) continues to provide a quick and confidential mediation service to help small businesses, landlords and tenants resolve disputes.

52. If a small business tenant or landlord has already lodged an application for a dispute over rent relief and is seeking to claim further rent relief, do they need to apply to the Victorian Small Business Commission (VSBC) twice?

If the initial dispute hasn't yet been resolved, we recommend the tenant or landlord contact the dispute resolution officer who has been helping to resolve the dispute to find out what further information they might need to provide.

53. Is a landlord required to reduce or refund outgoings?

If a third party (e.g. a water company or council) reduces any outgoings charged, the landlord is required to pass on this reduction to the tenant (i.e. the tenant pays their share of the reduced outgoings). If the tenant has already paid the landlord their share of the original outgoings, the landlord must reimburse the excess amount as soon as possible.

54. What are outgoings?

Outgoings are costs relating to the premises that a tenant may need to pay (e.g. water rates or council rates).

It is the landlord's responsibility to provide the tenant with various documents outlining outgoings (estimates and actual) and who is responsible for paying these costs at various points over the term of the lease.

55. Is a landlord required to waive recovery of outgoings?

A landlord must consider waiving recovery of any outgoings or other expenses payable by the tenant under the lease for the time during the relevant period that the tenant is unable to operate their business at the premises.

56. Can a landlord stop providing services at the premises?

If a tenant is unable to operate their business at the premises for any length of time during the relevant period, the landlord can stop providing, or reduce the provision of, any service at the premises, provided this is reasonable in the circumstances and in response to any reasonable request of the tenant.

57. Can a landlord hold the security deposit (bond) until deferred rent has been paid?

Depending on the terms of the lease or other agreement reached between the landlord and tenant, a landlord might be able to hold the security deposit until after the tenant has finished paying the deferred rent.

58. Can a landlord require the tenant to pay interest or other fees or charges in relation to paying deferred rent?

A landlord must not require a tenant to pay interest or any other fee or charge in relation to any payment of rent deferred by varying the lease or other agreement.

59. Does a tenant's eligibility for rent relief change depending on eligibility for, and participation in JobKeeper at various points in time?

No. The ATO states that if a business qualifies for JobKeeper payments because turnover has declined by the required amount, the business remains eligible and does not need to keep testing turnover in the following months. However, the business will have ongoing monthly reporting requirements.

60. If a tenant becomes ineligible for JobKeeper, do they become ineligible for rent relief?

If a tenant ceases to qualify for and take part in the JobKeeper scheme, any rent relief previously agreed to or ordered by the Victorian Small Business Commission (VSBC) will continue to apply for the period stated in that agreement or order.

A tenant who is no longer taking part in JobKeeper, however, cannot apply for further rent relief under the Commercial Tenancy Relief Scheme.

61. What can be done if an agreement reached at mediation breaks down?

The Terms of Settlement agreement (signed at the end of mediation) is a binding document and can be enforced by judicial or tribunal proceedings, if necessary (e.g. by applying to the Victorian Civil and Administrative Tribunal (VCAT)).

62. If mediation fails, what can a landlord or tenant do next?

If mediation fails to resolve a dispute over rent relief, the Victorian Small Business Commission (VSBC) can issue a certificate stating that mediation has failed. The landlord or tenant may then be able to file an application with the Victorian Civil and Administrative Tribunal (VCAT) to ask for a rent relief order.

63. What is a binding order and when can it be made? *N.B. replaces Q. 63–66*

A binding order is an order that the Victorian Small Business Commission (VSBC) can make under the Commercial Tenancy Relief Scheme (the Scheme) in certain circumstances that sets the amount of rent relief a landlord must give the tenant.

The VSBC can make a binding order for rent relief where:

- the VSBC has issued a certificate stating mediation has failed or is unlikely to resolve the dispute and the landlord has failed to respond to a dispute notice in the form required under regulation 20(2C) or the landlord has not engaged in mediation in good faith and
- the dispute relates to a tenant's written rent relief request that complies with the Scheme's requirements and was made from 29 September 2020 to 28 March 2021 and

- the tenant under an eligible lease has applied to the VSBC for a binding order and
- the landlord or tenant has not started action at the Victorian Civil and Administrative Tribunal (VCAT) or a court in relation to the dispute and
- the VSBC deems it fair and reasonable to do so in all the circumstances.

A binding order might require the landlord to:

- waive part, or all, of the rent from the date the tenant initially applied for rent relief to 28 March 2021 and/or
- defer payment of part of the rent from the date the tenant initially applied for rent relief to 28 March 2021.

The order might also direct the method of payment of any deferred rent.

A tenant can apply for a binding order using the VSBC's request form.