

## The Victorian Small Business Commission's Commercial Tenancy Relief Scheme FAQs for the period 28 July 2021 – 15 January 2022

**Please note: the Victorian Government's previous Commercial Tenancy Relief Scheme (the Scheme) has ended. These FAQs apply to this Scheme (28 July 2021 – 15 January 2022). [Find out more about current supports under the extended Scheme.](#)**

The information in this file is not to be taken as specific legal advice. If you need help to resolve a dispute, please apply via our [application forms page](#).

### 1. What is the Commercial Tenancy Relief Scheme (the Scheme)?

The Commercial Tenancy Relief Scheme (the Scheme) has been reintroduced by the Victorian Government to ease the financial hardship faced by commercial tenants as a result of the coronavirus (COVID-19) pandemic.

To be eligible, the tenant must be a small to medium enterprise with an annual aggregate turnover under \$50m who has had a minimum 30 per cent reduction in turnover, **and has followed the process under the Scheme for requesting rent relief from their landlord, supplying the required evidence (see questions 12 and 13)**. To access the full eligibility criteria, see question 9.

The Scheme is broadly based on the previous Commercial Tenancy Relief Scheme that was introduced in 2020, with the aim of supporting tenants and landlords to negotiate in good faith to reach an agreement on rent relief in a timely manner.

The Victorian Small Business Commission (VSBC) is providing support to tenants and landlords through a free mediation service to assist parties in reaching a fair agreement that they can both accept (**see question 35 for information about the key requirements that *must* be met before an application can be made**).

Landlords who provide rent relief to their tenants will be supported through a \$120 million package. This comprises a \$20 million [Commercial Landlord Hardship Fund](#) and \$100 million to support [land tax relief](#) of up to 25 per cent for landlords who support their tenants.

A mandatory reassessment at 31 October 2021 enables both parties to check in and assess whether circumstances have changed and rent relief needs to be adjusted. **If a tenant does not provide the required evidence to their landlord for the mandatory reassessment by 31 October 2021, the waiver component of their rent relief agreement will no longer apply from that date onwards. Read more [here](#).**

The Scheme is effective from 28 July 2021 and will run until 15 January 2022.

### Quick reference to key resources located in the following FAQs

[Table 1](#) – Rent relief periods

[Table 2](#) – Comparison and turnover periods

[Table 3](#) – Reassessment periods

[Table 4](#) – Alternative tests

[Eligibility flowchart](#) – preliminary questions

[Optional tenant letter template 1](#) – for making a single, complete rent relief request

[Optional tenant letter template 2](#) – for making an initial rent relief request and a further letter for supplying the required evidence

[Optional landlord letter template](#) – for making a rent relief offer

[Binding order request form](#) – for a tenant to use to make a request to the VSBC

## 2. What are the key features of the Scheme?

The key features of the Scheme include the following:

- Commercial landlords are required to give their tenant rent relief that:
  - is in proportion to their tenant's fall in turnover because of coronavirus
  - is made up of a minimum 50 per cent rent waiver (the remainder can be made up of a rent deferral).
- **KEY REQUIREMENT:** In order to get rent relief under the Scheme, eligible tenants *must* make a compliant request to their landlord in writing, providing the required evidence (see questions 12 and 13).
- Evictions for not paying rent will be banned until 15 January 2022 where the tenant:
  - is a small to medium enterprise (SME)
  - has an annual aggregate turnover under \$50m (at the group level)
  - had a minimum 30 per cent reduction in turnover because of coronavirus and
  - has followed the process under the Scheme for requesting rent relief from their landlord (see question 13).
- There will be a freeze on rent increases until 15 January 2022.
- Fall in turnover will be calculated by comparing pre-pandemic 2019 turnover to recent turnover in 2021. Tenants can compare their turnover from any three consecutive months between 1 April and 30 September 2021 to their turnover in the same three months in 2019.
- Newer businesses that weren't operating in 2019 will also be protected, with special arrangements in place to calculate their turnover impacts.
- A mandatory reassessment point enables tenants and landlords to check in with each other during the period of rent relief and assess whether circumstances have changed and rent relief should be adjusted.
- Tenants and landlords can access free mediation through the Victorian Small Business Commission (VSBC) to resolve disputes over rent relief and other disputes under the Scheme.
- **KEY REQUIREMENT:** Before a tenant applies for mediation under the Scheme, they:
  1. *must* have made a compliant rent relief request to their landlord, supplying the required evidence (see questions 12 and 13)

2. **must attach their written request and evidence when applying for mediation.**

**Landlords can apply for mediation in situations where their tenant has stopped paying rent and an agreement can't be reached.**

Access our application forms [here](#).

- Tenants can apply to the VSBC for a binding order for rent relief if their landlord fails to respond or sufficiently respond to the VSBC or doesn't engage in mediation in good faith (see question 61).

Small business tenants seeking rent relief will need to make a written request to their landlord with evidence of their eligibility, as set out in question 9.

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](#) have been made under the Scheme.

**3. What are the transition arrangements between the previous Scheme and the current Scheme?**

Many tenants and landlords will have agreements or arrangements in place that were negotiated under the previous Scheme. Tenants should continue to make genuine efforts to pay their rent as previously negotiated.

Where a compliant request for rent relief has been made under the current Scheme and where there is also an agreement already in place from the previous Scheme, the existing deferred rent repayments are frozen until 15 January 2022. At this time, the tenant must resume repaying the previously deferred rent in the same instalments and frequency as previously deferred

**4. If a tenant was eligible for the previous Scheme, are they automatically eligible for rent relief under the current Scheme?**

No – a new request for rent relief must be made to the landlord and the tenant must meet the eligibility criteria under the current Scheme.

**5. Are sole traders eligible to take part in the Scheme?**

Yes. Sole traders are eligible to take part in the Scheme.

**6. Does the Scheme apply to commercial licences?**

It is important to note that the Scheme applies to commercial licences. For example, where there is no lease but where a business has a licence to occupy offices from which it provides its services or supplies its goods. Commercial licensees and licensors have the same rights and obligations under the Scheme.

**7. Does an eligible tenant need to be registered for GST?**

No. While the turnover calculations are based on GST turnover, an eligible tenant does not have to be registered for GST to be eligible, as long the tenant fulfils all eligibility criteria.

## 8. What is an 'eligible lease'?

An eligible lease is a retail or non-retail commercial lease or licence that was in effect on 28 July 2021 under which the tenant (which includes licensees) is an operator of a small to medium enterprise and is eligible under the Scheme.

To help in determining eligibility, see the VSBC's [flowchart](#), which walks through the preliminary questions.

## 9. What is an eligible tenant?

**It is important that tenants read the [regulations](#) for the Scheme carefully, in particular the information about eligibility, because this FAQ only provides general information about this topic. It doesn't refer to all circumstances of a tenant's eligibility or ineligibility.**

In most cases, an eligible tenant:

- is an SME entity that, as at 28 July 2021, operated a business in Australia and
- satisfies the fall in turnover test as set out at regulation 12 of the Scheme and
- is not an 'excluded' tenant or certain prescribed class of tenant.

An SME entity is defined in regulation 10 of the Scheme. For the purposes of the Scheme, it's an entity with an annual turnover of less than \$50m at the group level during the 2021 financial year or, if having not traded for the full duration of the 2021 financial year, its turnover for the 2022 financial year is likely to be less than \$50m.

Please refer to [table 2](#), which sets out information in relation to the turnover test, the turnover test period and comparison turnover.

An 'excluded' tenant includes tenants who use the premises wholly or predominantly for a farming or agricultural activity. It also includes tenants who are a listed corporation or a subsidiary of a listed corporation.

Under the Scheme, certain entities are not eligible tenants. Examples of these are a local governing body, an Australian government agency, a tenant whose financial affairs and property are under external administration (such as tenant who is subject to a trustee in bankruptcy or a liquidator) and a tenant who is affiliated with another entity where the combined turnover of the tenant and the other entity exceed \$50m.

To help in determining eligibility, see the VSBC's [flowchart](#), which walks through the preliminary questions.

## 10. 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.

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 does not become payable by the tenant at a later date.

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

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).

### 11. For what period does rent relief apply?

The Scheme is in operation from 28 July 2021 to 15 January 2022.

Rent relief agreements can be made within this period and can extend beyond the period of the Scheme.

The Scheme is retrospective back to the date of its announcement of 28 July 2021. A tenant can make a request for rent relief back to that date, as long as they submit their application to their landlord and provide the necessary evidence on or before 30 September 2021. If the tenant applies after 30 September 2021, the rent relief period starts from the date they apply to their landlord.

See [table 1 – rent relief periods](#).

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

If a tenant is having trouble paying rent because of coronavirus, the VSBC recommends they:

- keep paying, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover
- speak or 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 under the Scheme](#), which includes negotiating in good faith, to try to reach an agreement on rent relief.

**KEY REQUIREMENT:** In order to get rent relief under the Scheme, eligible tenants ***must*** make a compliant request to their landlord in writing, providing the required evidence (see question 13).

Tenants can use the VSBC's letter templates to guide them in requesting rent relief. These optional templates include:

- [option 1](#) – a letter for making a single, complete request
- [option 2](#) – a letter for making an initial request and a further letter for supplying the required evidence.

If anything about the Scheme is unclear to a tenant or landlord or if they have concerns, they can [contact the VSBC](#) for advice. If they can't reach an agreement, they can [apply to the VSBC](#) for help in resolving their rent dispute through free mediation.

### 13. 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 from the tenant that they are an eligible tenant

- a statement that the tenant satisfies the decline in turnover test, which includes setting out:
  - the tenant's turnover for the turnover test period, including the turnover test period used
  - the tenant's comparison turnover, including stating whether the relevant comparison period or a specific alternative turnover method was used (see [table 2](#))
  - if an alternative comparison turnover method was used, how the comparison turnover was calculated
  - the tenant's fall in turnover
  - the reduction in rent that would satisfy the minimum requirements of an offer of rent relief made by a landlord in accordance with the Scheme and
  - any other circumstances that the tenant would like the landlord to consider in making an offer of rent relief under the Scheme.
- a statutory declaration made by the tenant or an authorised officer of the tenant stating that the tenant is an eligible tenant and that the information provided by the tenant is true to the best of the tenant's knowledge and belief.

It is very important that the tenant provides the required statutory declaration to the landlord within 14 days of making their rent relief request. If this is not done, then the request for rent relief will lapse and the tenant will not be protected under the Scheme. A tenant is permitted to make up to 3 requests for rent relief that lapse. Following this, a tenant cannot make a further request for rent relief under the Scheme.

Tenants can use the VSBC's letter templates to guide them in requesting rent relief. These optional templates include:

- [option 1](#) – a letter for making a single, complete request
- [option 2](#) – a letter for making an initial request and a further letter for supplying the required evidence.

#### **14. How is 'turnover' defined?**

Turnover is defined as the GST turnover of a small to medium enterprise and includes:

- the proceeds of sales of goods and/or services (including any turnover from internet sales of goods or services)
- commission income
- repair and service income
- rent, leasing and hiring income
- government bounties and subsidies
- interest, royalties and dividends
- other operating income
- payments such as Victorian Government COVID-19 Business Support Fund payments received by the tenant during the relevant period.

Turnover does not include GST or any financial assistance paid to the tenant by the Commonwealth in response to coronavirus.

### 15. How is the decline in turnover test satisfied?

A tenant satisfies the decline in turnover test if the turnover for the **turnover test period** falls short of the tenant's **comparison turnover** by 30 per cent or more.

The term 'turnover test period' has various meanings depending on the date the tenant started trading at the premises. Please refer to [table 2](#) for more information.

The term 'comparison turnover' is the tenant's turnover for the **relevant comparison period** or, if applicable, an alternative comparison turnover period.

The 'relevant comparison period' depends on the turnover test period that is selected to make the comparison. Please refer to [table 2](#) for more information.

A tenant can use an alternative comparison turnover if:

- they started their business on or after 1 April 2019. Please refer to [table 2](#) for more information.
- there was an acquisition or disposal of the tenant's business on or after the start of the relevant comparison period and before the applicable turnover test period that changed the tenant's comparison turnover
- there was a restructure of the tenant's business on or after the start of the relevant comparison period and before the applicable turnover test period that changed the tenant's turnover
- the tenant's turnover has substantially increased by certain percentages within certain periods immediately before the applicable turnover test period
- the tenant's business has been affected by drought or natural disaster during the relevant comparison period and this event changed the tenant's turnover
- the tenant's turnover is irregular and not cyclical
- the tenant is a sole trader or small partnership without employees who, due to sickness, injury or leave, did not work for all or part of the relevant comparison period and the tenant's turnover was affected as a result
- the tenant temporarily ceased trading for a week or more during the relevant comparison period and resumed trading before 28 July 2021 due to uncontrollable and extraordinary circumstances.

A decline in turnover is calculated by comparing turnover for the comparison periods as shown in [table 2](#).

To work out actual turnover, tenants need to use a cash or accruals basis. However, they must use the same method for both periods.

### 16. Are alternative tests available to determine a decline in turnover?

For most businesses the turnover test period is the three consecutive months between 1 April 2021 and 30 September 2021, with the comparison period being the corresponding three months between 1 April 2019 and 30 September 2019. If your business started trading after 1 April 2019, see question 15 for information about alternative comparison periods for new businesses.

If your business started before 1 April 2019 but events or circumstances outside your normal business settings mean that the normal comparison period is not appropriate for your business, you might be able to demonstrate decline in turnover by using alternative tests, similar to the tests you might have used to determine your eligibility for JobKeeper. To access the alternative tests for the Scheme, see [table 4](#).

### **17. Which comparison turnover period and turnover test period applies?**

The comparison turnover period and turnover test period used by a tenant to demonstrate their eligibility for the Scheme and the request for rent relief that matches their fall in turnover depends on when the business started.

Where possible, a tenant compares their recent turnover to a comparison point before the impacts of coronavirus started in March 2020. There are different tests for businesses that started during the pandemic, depending on the date they started.

See [table 2 – comparison and turnover periods](#).

### **18. What evidence is required to show a fall in turnover?**

A tenant needs to provide evidence of at least one of the following to their landlord to show a fall 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](#) – as 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

### **19. What turnover evidence is not appropriate for a landlord to ask a tenant in connection with an offer of rent relief?**

A landlord should not ask the tenant to provide any financial information other than one of the four forms of financial information required to be provided by the tenant under the Scheme (see question 18). For example, the 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).

## **20. What does a landlord need to do to respond to a tenant's compliant request for rent relief?**

A landlord must offer rent relief in writing to an eligible tenant within 14 days of the tenant making a compliant 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 during the rent relief period and must, at a minimum, match the fall in the tenant's turnover. 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.

Landlords can use the VSBC's [optional letter template](#) to guide them in making a rent relief offer. For more guidance, download the VSBC's [fact sheet on landlord rights and obligations](#).

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

Where a tenant doesn't agree with the landlord's offer, the landlord and tenant must continue to negotiate in good faith with the aim of reaching a fair agreement on rent relief for the rent relief period (see question 22).

## **22. What does negotiating 'in good faith' mean?**

It involves all parties communicating with each other and having discussions honestly and fairly with the genuine aim 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. It is an offence under the Scheme if a landlord or tenant provides false or misleading information.

Under 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 VSBC may make a binding order for rent relief if a landlord does not sufficiently respond to the VSBC or does not engage in mediation in good faith (see question 61).

## **23. 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 fall in the tenant's turnover. For example, if the tenant's turnover has fallen by 40 per cent (using the comparison period in question 17), 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. The remainder can be made up of a rent deferral.

## **24. What is the period during which a landlord must provide proportional rent relief to their tenant (i.e. rent relief that matches the tenant's fall in turnover)?**

The period depends on the date the tenant makes a compliant request for rent relief.

If the tenant makes the request for rent relief on or before 30 September 2021 then the landlord may be required to offer rent relief from 28 July 2021 to 15 January 2022.

If the tenant makes the request for rent relief after 30 September 2021 then the landlord may be required to offer rent relief from the date of the request to 15 January 2022.

## **25. Does a landlord's rent relief offer need to directly equal the tenant's fall in turnover?**

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

- match the fall in the tenant's turnover during the most recent turnover test period
- apply to the period as set out in question 17, 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).

## **26. What supports are available to a landlord who provides rent relief to their tenant?**

The Victorian Government is providing [land tax relief](#) of up to 25 per cent to landlords waiving rent for their tenants, in addition to any previous 2021 land tax relief, at an estimated cost of \$100 million. Businesses that own their premises may also be eligible. Eligible landlords will also be able to defer any remaining 2020 and 2021 land tax until 31 May 2022.

Small landlords who experience hardship as a result of waiving rent between 28 July 2021 and 15 January 2022 under the Scheme will be eligible to apply for a grant of up to \$6,000 per eligible tenancy as part of the Commercial Landlord Hardship Fund 3. In cases where landlords are experiencing acute hardship because of an agreed rent waiver, the grant may be increased to a maximum of \$10,000 per eligible tenancy. When applying, landlords must provide information about the agreed rent waiver using Business Victoria's acceptance template letter or similar. FAQs, the template letter and information on how to apply are available on the [Business Victoria website](#).

## **27. Can a tenant be deemed to have accepted a landlord's offer of rent relief?**

Yes. A tenant will be deemed to have accepted the landlord's offer of rent relief if after 15 days of receiving the landlord's offer:

- the landlord and tenant haven't reached agreement in relation to rent relief and
- the tenant hasn't applied to the VSBC for free mediation and
- the landlord's offer of rent relief complies with the minimum requirements of the Scheme.

## **28. What if rent relief that had previously been negotiated doesn't match the tenant's fall in turnover?**

Rent relief agreements already in place will continue as agreed. A tenant can request further rent relief that matches their fall in turnover from 28 July 2021.

### **29. 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 and their financial circumstances have materially changed.

The landlord and tenant must follow the same processes set out in the Scheme for requesting and offering rent relief.

### **30. Can a tenant apply for rent relief on rent that is due before 28 July 2021?**

A tenant can only apply for rent relief for the period 28 July 2021 to 15 January 2022, as set out in question 11. Agreements made before 28 July 2021 still apply, though tenants can seek further rent relief for the period 28 July 2021 to 15 January 2022.

### **31. How does the mandatory check in point to reassess rent relief work?**

**If a tenant requested rent relief by 30 September 2021 and started trading before 1 April 2021, they must provide the required evidence to their landlord for the mandatory reassessment by 31 October 2021. If they don't, the waiver component of their rent relief agreement will no longer apply from that date onwards (i.e. the tenant will need to go back to paying their full rent under the original agreement, with any agreed rent deferral continuing).**

The purpose of the reassessment is for tenants and landlords to check in with each other during the period of rent relief and assess whether circumstances have changed and rent relief should be adjusted. Read more [here](#).

See [table 3 – reassessment periods](#).

### **32. How is rent relief reassessed at the mandatory check in point?**

The fall in turnover for the reassessment period is calculated by comparing the turnover in the two periods in [this table](#), depending on when the business started. Rent relief might either increase or decrease as a result of the reassessment.

The minimum reduction in rent must be the same as the fall in turnover, with at least half waived and the remainder deferred.

The tenant must provide the landlord in writing:

- the test turnover
- the comparison turnover
- the change in turnover
- a statutory declaration made by the tenant or an authorised officer of the tenant stating that the tenant is an eligible tenant and that the information provided by the tenant is true to the best of the tenant's knowledge and belief.

**If a tenant does not provide the required evidence to their landlord for the mandatory reassessment by 31 October 2021, the waiver component of their rent relief agreement will no longer apply from that date onwards. Read more [here](#).**

### **33. Can rent be increased during the protection 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 28 July 2021 to 15 January 2022 (the protection period), 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.

Any provision in the eligible lease that does increase or may have the effect of increasing the rent during the protection period is void and can never be claimed by the landlord.

### **34. What if a tenant refuses to negotiate or keep paying rent?**

The landlord can [apply to the VSBC for help](#), which includes preliminary assistance provided by VSBC staff. Where disputes can't be resolved this way, the matter can be progressed to free and impartial mediation.

At mediation, an experienced and independent mediator will assist both parties to have good faith negotiations with the aim of reaching a fair agreement.

For information on whether a tenant is in breach of their lease for not paying rent, see question 43. For information on whether a tenant can be evicted for not paying rent, see question 53.

### **35. How can a landlord and tenant resolve a dispute?**

If a landlord and tenant need help to resolve a dispute over rent relief, they can apply to the VSBC for help.

Help can be sought early on, often just over the phone, and where disputes can't be resolved this way, there is additional help available through access to free mediation. At mediation, an experienced and independent mediator will guide both parties in good faith negotiations with the aim of reaching an agreement that both parties can accept.

**KEY REQUIREMENT: Before a tenant applies for mediation under the Scheme, they:**

1. **must have made a compliant rent relief request to their landlord, supplying the required evidence (see questions 12 and 13)**
2. **must attach their written request and evidence when applying for mediation.**

**Landlords can apply for mediation in situations where their tenant has stopped paying rent and an agreement can't be reached.**

**Access our application forms [here](#).**

### **36. Can a tenant who is not under an eligible lease apply to the VSBC for help?**

Yes. The VSBC offers a [dispute resolution process](#), which includes [free mediation](#) to help small business tenants and landlords to resolve rent relief disputes at no cost. Where a tenant isn't under an eligible lease, the landlord and tenant can use the Scheme to guide their negotiations although the rent relief requirements cannot be mandated. It's important for parties to negotiate in 'good faith' (see question 22).

### **37. Is the Victorian Small Business Commission currently providing mediation services?**

Yes, mediation services are being conducted via videoconferencing and teleconferencing at no cost to commercial tenants and landlords. Either party can apply for mediation via the VSBC's applications web page.

**KEY REQUIREMENT: Before a tenant applies for mediation under the Scheme, they:**

1. **must have made a compliant rent relief request to their landlord, supplying the required evidence (see questions 12 and 13)**
2. **must attach their written request and evidence when applying for mediation.**

**Landlords can apply for mediation in situations where their tenant has stopped paying rent and an agreement can't be reached.**

Access our application forms [here](#).

### **38. How much will mediation cost for businesses that are already in financial distress?**

There is no cost to small business tenants or their landlords for mediation to help resolve a dispute over rent relief. Either party can apply for mediation via the VSBC's [applications web page](#).

### **39. 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).

### **40. If a small business tenant or landlord has already submitted an application to the VSBC for help to resolve a dispute over rent relief and is wanting to request further rent relief, do they need to apply to the VSBC twice?**

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

### **41. 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 any personal, commercial, business or financial information obtained in the course of any dealings between them in connection with the Scheme, except where specifically permitted.

### **42. Is mediation binding?**

Mediation doesn't involve making orders or handing down a decision for or against a party. Whether an agreement is reached is up to the parties. If a landlord and tenant reach agreement at mediation, they can sign binding Terms of Settlement. If a party to an agreement doesn't meet their obligations, the other party may be able to take action at the [Victorian Civil and Administrative Tribunal \(VCAT\)](#) to enforce the agreement. For example, if a tenant breaks an agreement to pay agreed rent relief, they may be at risk of being evicted.

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

No, providing the process for requesting rent relief has been followed or the tenant pays the amount of rent in line with any lease variation or other rent relief agreement either directly or indirectly (e.g. where the landlord agreed to provide a service for the tenant).

**Key requirement:** If a tenant requested rent relief by 30 September 2021 and started trading before 1 April 2021, they must provide the required evidence to their landlord for the [mandatory reassessment](#) by 31 October 2021. If they don't, the waiver component of their rent relief agreement will no longer apply from that date onwards (i.e. the tenant will need to go back to paying their full rent under the original agreement, with any agreed rent deferral continuing).

#### **44. Under what circumstances can a landlord evict a tenant under the Scheme?**

A landlord cannot evict a tenant who is eligible under the Scheme if the tenant can't pay rent because of a fall in turnover due to coronavirus, provided:

- the lease was in effect on or before 28 July 2021 and
- the tenant has made a written request for rent relief from their landlord in line with the [regulations for the Scheme](#).

A landlord also cannot evict a tenant under an eligible lease where the tenant is unable to trade as a result of:

- sickness or injury affecting the tenant, its officers or employees
- natural disaster affecting the tenant.

The ban on eviction does not cover circumstances that fall outside the Scheme. For example, evictions relating to:

- damage to the property
- unpaid rent before 28 July 2021
- situations where a tenant doesn't pay rent that they had agreed to pay under a rent relief agreement.

The ban on eviction does not cover tenants who are not eligible under this Scheme.

#### **45. What will happen to tenants that have already received an eviction notice?**

These tenants should contact the VSBC in relation to their individual situation.

If a tenant has been issued a Notice to Vacate or eviction notice and they want to remain at the premises, they should immediately contact their landlord to see if they can come to an agreement to avoid being evicted. If they are unable to reach a resolution, they should apply to the VSBC for free and impartial mediation. At mediation, parties will be supported in negotiating leasing arrangements.

The VSBC can be contacted on 13 8722 or by [submitting an application form online](#).

#### **46. 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 15 January 2022.

#### **47. If rent is deferred, is the lease extended?**

Yes. If payment of any rent is deferred by a rent relief agreement, 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 28 July 2021, unless the landlord and tenant reach a different agreement in writing.

#### **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 or if both parties agree to this happening.

Some tenants who are experiencing a downturn in trade might want to end their lease early. The VSBC encourages 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? What can the landlord do if this happens?**

Yes, a tenant can do this. An eligible tenant is not in breach of their lease if they reduce opening hours or if they close their business and stop carrying out business at the premises during the protection period.

If this occurs, a landlord must not:

- evict or try to evict the tenant.
- re-enter or try to re-enter the premises
- have recourse or try to have recourse to any security relating to the non-payment of rent under the lease.

If a tenant meets all other eligibility criteria they do not need to demonstrate a decline in turnover for this protection.

#### **50. 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's 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.

**51. 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.

**52. 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 any part of the protection period that the tenant is unable to operate their business at the premises.

**53. Can a tenant be evicted for not paying rent or outgoings during the protection period?**

If a tenant has followed the process for requesting rent relief (see question 13) 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 \$3,634.80.

**54. 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 protection period, the landlord can stop providing, or reduce the provision of, any service at the premises, provided this is reasonable in the circumstances or is in response to any reasonable request of the tenant.

**55. 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.

**56. 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 a rent relief agreement.

**57. 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 [VCAT](#)).

#### **58. If mediation fails, what can a landlord or tenant do next?**

If mediation fails to resolve a dispute over rent relief, the VSBC can issue a certificate stating that mediation has failed. The landlord or tenant may then be able to file an application with [VCAT](#) to ask for a rent relief order.

#### **59. If a dispute can't be resolved at mediation, can it be determined by VCAT or a court?**

Where possible, the landlord and tenant should try to resolve their dispute and avoid a legal proceeding. However, if a dispute about a lease can't be resolved at [mediation](#), a landlord or tenant can apply to [VCAT](#) or a court to make a decision. 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 VSBC has certified in writing that mediation failed or is unlikely to resolve the dispute.

#### **60. What if a landlord refuses to negotiate?**

Under the Scheme, commercial tenants and landlords can access [free mediation](#) through the VSBC to help resolve a dispute over rent relief.

The VSBC can make a binding order for rent relief if the landlord does not respond or sufficiently respond to a dispute notice from the VSBC or does not mediate in good faith, where the VSBC is satisfied the decision to do so is fair and reasonable in all circumstances.

The VSBC can also issue a certificate that enables the dispute to proceed to [VCAT](#). VCAT is then able to make a determination on the rent relief dispute.

#### **61. What is a binding order and when can it be made?**

A binding order is an order that the VSBC can make under the Scheme in certain circumstances that sets the amount of rent relief a landlord must give the tenant.

The VSBC must 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 or sufficiently respond to a dispute notice 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](#)
- 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 VCAT or a court in relation to the dispute and
- the VSBC is satisfied that it is fair and reasonable to do so in all the circumstances.

A binding order may require the landlord to:

- waive part, or all, of the rent for the rent relief period and/or
- defer payment of part of the rent for the rent relief period.

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](#).

**62. How can tenants and landlords access the VSBC's FAQs on rent relief from before 28 July 2021 in response to coronavirus?**

The VSBC's FAQs on rent relief from before 28 July 2021 in response to coronavirus can be accessed [here](#).