# Commercial Tenancy Relief Scheme (29 March 2020 to 29 September 2020) – FAQs

**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](https://www.vsbc.vic.gov.au/your-rights-and-responsibilities/retail-tenants-and-landlords/) (the Scheme) to alleviate financial hardship faced by commercial tenants and landlords as a result of coronavirus.

The Scheme provides:

* a six-month moratorium on evictions for not paying rent for small to medium enterprises (SMEs) with an annual turnover under $50m that have had a minimum 30 per cent reduction in turnover because of coronavirus, starting from 29 March 2020
* a freeze on rent increases during the moratorium
* rent relief in the form of a rent payment waiver or deferral proportionate to the tenant’s reduction in income because of coronavirus, to be negotiated between the tenant and landlord
* a [free mediation service for commercial tenants and landlords](https://www.premier.vic.gov.au/free-mediation-service-for-commercial-tenancy-disputes/), accessed through the VSBC, to support fair tenancy negotiations.

Regulations for the Scheme ([COVID-19 Regulations](https://content.legislation.vic.gov.au/sites/default/files/2020-05/20-031sra%20authorised.pdf)) have been made under the *COVID-19 Omnibus (Emergency Measures) Act 2020*. These Regulations create temporary requirements for landlords and tenants during the moratorium.

**2. Is a tenant entitled to rent relief if they have experienced a loss of business because of coronavirus (COVID-19)?**

A tenant is entitled to rent relief under the [Commercial Tenancy Relief Scheme](https://www.vsbc.vic.gov.au/your-rights-and-responsibilities/retail-tenants-and-landlords/) if they:

* occupy premises under an eligible lease ***and***
* are an SME with an annual turnover under $50m ***and***
* are an employer participating in the [JobKeeper scheme](https://www.ato.gov.au/general/JobKeeper-Payment/?=Redirected_URL).

**3. 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. An offer of rent relief must be based on all the circumstances of the lease and relate to up to 100 per cent of the rent payable during the relevant period. 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.

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

The relevant period is from 29 March 2020 to 29 September 2020.

**5. 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 SME and an employer who participates in the JobKeeper scheme. Some farming and agricultural leases are not included.

**6. 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.

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

Yes. 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)](https://www.business.gov.au/Risk-management/Emergency-management/Coronavirus-information-and-support-for-business/Relief-for-commercial-tenancies), 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.

The VSBC offers a [dispute resolution process](https://www.vsbc.vic.gov.au/dispute-resolution/), which includes a [mediation service](https://www.vsbc.vic.gov.au/dispute-resolution/how-mediation-works/), to assist businesses that need help in resolving rent relief disputes. 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.

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

To prove they participate in the JobKeeper scheme, a tenant can provide a copy of their Business Enrolment for JobKeeper Wage Subsidy ATO receipt that they received after the ATO accepted their application for JobKeeper. A tenant can request a copy of the receipt from the ATO’s call centre.

**9. How is ‘turnover’ defined?**

Turnover is defined as the *annual turnover*of an SME 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.

A landlord can request turnover information from the tenant to help inform their offer of rent relief.

**10. How is turnover calculated?**

Examples of ways a tenant can calculate turnover include:

* comparing their actual turnover for March 2020 with March 2019 ***or***
* comparing likely turnover for April 2020 with actual sales for April 2019 ***or***
* comparing likely turnover for the April to June quarter with actual sales in that quarter in 2019 ***or***
* comparing actual or likely turnover for a later month or quarter to the same period in 2019 until the end of the relevant period.

To work out likely turnover, tenants need to use a cash or accruals basis to calculate a decline in turnover. However, they must use the same method for both periods. This means that if they used a cash basis to work out turnover in March 2020, they will need to use a cash basis to work out turnover in March 2019 and:

* make a reasonable estimate ***and***
* document the reasons for the estimate.

The [ATO](https://www.ato.gov.au/general/jobkeeper-payment/employers/eligible-employers/) offers further guidance in calculating turnover.

**11. 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](https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/JobKeeper-tests/Applying-the-turnover-test/?anchor=Alternativetest#Alternativetest) that can be taken by businesses that have traded for less than 12 months.

**12. 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 that the tenant’s lease is an eligible lease and the lease is covered by the Commercial Tenancy Relief Scheme ***and***
* include information that verifies the tenant is an SME entity and qualifies for, and participates in, the JobKeeper scheme.

**13. What turnover information is appropriate for a landlord to request from the tenant to help inform their offer of rent relief?**

A landlord can ask the tenant for information:

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

**14. 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.

**15. 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 receiving the tenant’s 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 relevant period. 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.

**16. 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.

**17. 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 gives effect to rent relief either directly or indirectly.

**18. 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.

**19. Can a tenant be evicted for not paying rent 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 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.

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

Yes. The Victorian Small Business Commission continues to provide a quick and confidential [mediation service](https://www.vsbc.vic.gov.au/dispute-resolution/how-mediation-works/) to help small businesses, landlords and tenants resolve disputes.

**21. How is rent relief agreed to?**

A landlord and the tenant can agree to rent relief by a variation to the lease or any other agreement between them that gives effect to the rent relief, either directly or indirectly.

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

If the financial circumstances of a tenant materially change after a variation has been made to the lease or an agreement has been reached, the tenant can make a further request to the landlord for rent relief. To negotiate further rent relief, the landlord and tenant must follow the same process for agreeing to the initial rent relief, though the landlord is not required to offer at least 50 per cent of the further rent relief in the form of a rent waiver.

**23. 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 during the relevant 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.

**24. 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 [COVID-19 Regulations](https://content.legislation.vic.gov.au/sites/default/files/2020-05/20-031sra%20authorised.pdf) were implemented.

**25. Is a landlord required to reduce or refund outgoings?**

If a third party reduces any outgoings charged in relation to the premises, a landlord must not require a tenant to pay any amount that is greater than the tenant’s proportional share of the reduced outgoing. If a tenant has already paid the landlord an amount greater than a tenant’s proportional share of the reduced outgoing, the landlord must reimburse the excess amount as soon as possible.

**26. 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.

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

A landlord and tenant must vary the lease or otherwise agree to the tenant’s payment of the deferred rent to be spread over the remaining term of the lease (including any extension) or 24 months, whichever is greater. How the deferred rent is paid is to be agreed to by the landlord and tenant.

**28. Can a landlord hold the 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.

**29. 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.

**30. 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](https://www.vsbc.vic.gov.au/application-forms/) for free mediation.

**31. Is mediation binding?**

If a landlord and tenant reach agreement at mediation, they can sign binding Terms of Settlement.

**32. 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 VSBC has certified in writing that mediation failed or is unlikely to resolve the dispute.

**33. Is the information provided by a landlord or tenant 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 [COVID-19 Regulations](https://content.legislation.vic.gov.au/sites/default/files/2020-05/20-031sra%20authorised.pdf).

**34. 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 for the first fortnight 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](https://www.ato.gov.au/general/jobkeeper-payment/employers/eligible-employers/).