Commercial Tenancies (COVID-19 Response) Act 2020

How the Act and WA Code of Conduct (WA Code) apply for the extended emergency period.

<table>
<thead>
<tr>
<th>Requirement of Act or WA Code</th>
<th>30 March 2020 to 29 September 2020</th>
<th>30 September 2020 to 28 March 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord not permitted to take prohibited action for default in relation to non-payment of rent or failure to open premises (termination, eviction, interest on arrears and enforcing security or bank guarantee).</td>
<td>all small commercial leases</td>
<td>eligible tenants</td>
</tr>
<tr>
<td>Rent cannot be increased.</td>
<td>all small commercial leases</td>
<td>eligible tenants</td>
</tr>
<tr>
<td>An act or omission of the tenant required under law in response to the COVID-19 pandemic not to be considered a breach or grounds for action.</td>
<td>all small commercial leases</td>
<td>all small commercial leases</td>
</tr>
</tbody>
</table>

Code of Conduct requires:
• good faith negotiation;
• landlord to provide rent relief proportionate to tenant’s loss in turnover;
• deferred rent to be paid after emergency period ends or end of the lease (whichever is earlier); and
• lease term may be extended for same period for which rent deferred.

A small commercial lease includes:
• retail shop lease;
• lease where the tenant is a small business;
• lease where the tenant is an incorporated association; or
• lease for a commercial purpose to an Aboriginal and Torres Strait Islander corporation.

An eligible tenant is a tenant under a small commercial lease that:
• has an annual turnover of less than $50 million; and
• is eligible for the JobKeeper scheme or can show the same loss in turnover (30 per cent for a business or 15 per cent for a not-for-profit).

After 29 September 2020

If the tenant is an eligible tenant:
• landlord cannot take prohibited action or increase rent;
• the parties should negotiate in relation to further rent relief, can continue current arrangements or make a new agreement – rent relief should be adjusted to reflect changes in the tenant’s turnover;
• any rent that has been deferred is not payable until after 28 March 2021 (or end of the lease, whichever is earlier); and
• an act or omission of the tenant required under law in response to the COVID-19 pandemic is not a breach or grounds for action.

If the tenant is not an eligible tenant:
• landlord can take prohibited action in relation to defaults occurring after 29 September 2020;
• landlord can take action for non-payment of rent between 30 March 2020 and 29 September 2020 (provided the unpaid rent is not the subject of a rent relief request or dispute that has not been finalised);
• any rent that has been deferred is not payable until after 28 March 2021 (or end of the lease, whichever is earlier); and
• an act or omission of the tenant required under law in response to the COVID-19 pandemic is not a breach or grounds for action.
When the Commercial Tenancies (COVID-19 Response) Act 2020 (CTCR Act) and WA Code of Conduct (WA Code) apply

Is it a small commercial lease?
- retail shop lease; or
- tenant is a small business or incorporated association; or
- a lease for commercial purposes to an Aboriginal and Torres Strait Islander corporation.

Does tenant meet eligibility criteria?
- annual turnover less than $50 million; and
- qualifies for Jobkeeper or can show 30 per cent reduction in turnover (15 per cent not-for-profits).

30 March 2020 to 28 March 2021
CTCR Act applies
- Landlord cannot take prohibited action for breach (non-payment or failure to open).
- Freeze on rent increases.
- Dispute resolution mechanisms available (Small Business Commissioner and State Administrative Tribunal).

WA Code applies
- Requires parties to negotiate in good faith in accordance with leasing principles.
- Landlord to offer rent relief in form of waiver and deferral.

30 March 2020 to 29 September 2020
CTCR Act applies
- Landlord cannot take prohibited action for breach (non-payment or failure to open).
- Freeze on rent increases.
- Dispute resolution mechanisms available (Small Business Commissioner and State Administrative Tribunal).

WA Code does not apply

After 29 September 2020
CTCR Act does not apply
WA Code does not apply

Consumer Protection | Department of Mines, Industry Regulation and Safety
1300 304 054
8.30 am – 5.00 pm Mon, Tue, Wed and Fri
9.00 am – 5.00 pm Thurs
Gordon Stephenson House
Level 2, 140 William Street
Western Australia 6000
M: Locked Bag 100, East Perth WA 6892
W: www.dmirs.wa.gov.au
E: consumer@dmirs.wa.gov.au

Regional Offices
Goldfields/Esperance (08) 9021 9494
Great Southern (08) 9842 8366
Kimberley (08) 9191 8400
Mid-West (08) 9920 9800
North-West (08) 9185 0900
South-West (08) 9722 2888

National Relay Service: 13 36 77
Translating and Interpreting Service (TIS): 13 14 50
This publication is available in other formats on request to assist people with special needs.