

LEASING FREQUENTLY ASKED QUESTIONS

Q: What does a tenant demonstrate financial stress and hardship for eligibility to the National Code of Conduct?

A: The Code defines financial stress or hardship as a tenant's inability to generate sufficient revenue, as a direct result of the COVID-19 pandemic (including the government trading restrictions), that causes the tenant to be unable to meet its financial or contractual obligations (which includes its leasing obligations).

Eligibility for the JobKeeper Scheme is evidence of financial stress under the Code. Tenants can provide confirmation of their enrolment for the JobKeeper Scheme as evidence.

Where the tenant is not eligible for the JobKeeper Scheme, accounting or banking records that can show reduced income over the pandemic period to the extent that contractual obligations cannot be met would also demonstrate financial stress.

Q: Is the National Cabinet's Mandatory Code (for commercial tenancies) enforceable?

A: The Code is a set of guiding principles to assist with good faith negotiations between landlords and tenants affected by COVID-19. The Code is strictly not enforceable at law. Each of the State and Territory governments will be passing legislation that incorporates the principles of the Code – this legislation will be enforceable on eligible parties.

From the Government's comments, the purpose of the Code is to provide a consistent national approach that will complement each of the States and Territories' legislation.

Q: Have the States and Territories passed legislation for affected commercial tenancies?

A: NSW, Tasmania and ACT have passed emergency legislation that will allow them to release regulations or notices from the Minister that effect commercial tenancy arrangements. The legislation is broad and will allow them to prevent the termination of leases and landlord re-entry, freeze rental increases and deal with parties not complying with their leasing obligations.



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