

## COVID-19 ALERT

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### Update on leases with a response to Federal Cabinet's set of Principles on leases

There has been much anticipation as to what form measures for rent assistance and moratoriums on termination of leases might arise following the Federal Cabinet's release of a set of "Principles" on leases on 29 March. At the time of writing, there have been no further material legislative developments, however we understand that more detailed regulations are to be considered by Federal Cabinet tomorrow evening, and that State Government continue to consider their proposed individual regulatory approaches.

At the same time and consistent with the Federal Cabinet's recommendation for commercial approaches to the issue, there is some movement towards an industry led solution that balances both landlord and tenant's interests.

On late Tuesday 31 March, the National Retail Association, the Australian Retailers Association, Shopping Centre Council of Australia and the Pharmacy Guild of Australia announced that they had come together and agreed a response to the Cabinet's set of principles.

The agreed joint principles and full joint release can be viewed [here](#).

The release restates the Federal Cabinet's Principles and confirms that the associations generally support them, whilst articulating some further guidance on how tenants and landlord should deal with each other. Some take-aways:

- The Shopping Centres Association has re-stated that it has agreed to a moratorium on termination for non-payment of rent for **small to medium size enterprises (SMEs)**, and the associations together *support development of this principle* more broadly to all retail leases. At this stage the Shopping Centre Association seems to have delineated between SMEs and non-SMEs, though indicated that it may move beyond this delineation.
- Landlords and tenants are encouraged to negotiate **temporary rent assistance** (including "deferral") to be considered on a **case by case** basis. It is interesting to note that whilst "deferral" is expressly referred to, outright abatement of rental is not, although that is not to say such abatements cannot be sought by tenants, offered by landlords or negotiated between the parties. There does however seem to be a preference by landlords to reach agreement on a deferral basis rather than abatement, in recognition of the fact the current circumstances are anticipated to be temporary in nature for both parties.
- There is an emphasis on tenants providing **financial data** and other **business information** to landlords to demonstrate the retailer's capacity which includes consideration of the retailer's broader retail group (ie parent and related companies). An inference that could be drawn is that it may not be sufficient for a retailer to demonstrate distress of the specific tenant entity, if that entity is part of a broader group that is not experiencing the same level of business challenges.

As such the current position could be summarised as follows:

- While they have been foreshadowed at State and Federal levels, there is currently no regulation actually in place that would provide tenants with the benefit of a moratorium on termination for non-payment of rent;
- The Federal Cabinet and the landlord and retailer associations referred to above are encouraging landlord and tenants to negotiate "rent assistance", with the Principles and the industry body joint response seeking to set the tone and some guidance to the conduct of those discussions; and
- Absent any regulatory intervention to the contrary, any relief sought by a tenant in relation to its specific lease will be determined by the parties on a case-by-case basis having regard to the tenant's individual financial circumstances.

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