

COVID-19 Leasing Update – Small Business Commission FAQs

The Victorian Small Business Commission (SBC) have released FAQs in relation to the COVID-19 Commercial Tenancy Relief Regulations that clarify a number of issues that were unclear from the Regulations as follows:

What documents can be requested by a landlord and should be provided by a tenant?

JobKeeper Evidence

The tenant should provide their ATO Wage Subsidy receipt confirming their application was accepted.

Reduction of Turnover

For reduction of turnover a landlord is entitled to request information extracted from the tenants accounting system, their BAS statements and documents they provided to their Bank or Lender.

A landlord should not however request:

- future cash flow projections;
- balance sheets, profit and loss or year to date financials;
- the tenant's bank balance;
- financial information to be verified, assured, audited or provided by a third party such as an accountant; nor
- require an accountant to provide a letter of comfort or similar certification on the financial information provided.

How is turnover calculated?

Methods a tenant can calculate its reduction in 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.

Future Turnover

To work out **likely** turnover, tenants must use the same accounting basis as they did in the previous 12 months that is either the cash or accruals basis to calculate a decline in turnover and make a reasonable estimate; and give reasons for the estimate.

Accrual vs Cash Basis Accounting

For cash basis accounting, revenue is recorded when cash is received, and expenses recorded when they are paid, regardless of when they were invoiced.

For accrual accounting revenue is recognised when it is earned, and expenses when they are billed but not paid.

Tenants should check this with their accountant before providing the information.

What if the business has traded for less than 12 months?

The ATO offers information on an 'alternative test' that can be taken by businesses that have traded for less than 12 months.

The relevant appropriate comparison period in 2019 is a calendar month that ends after 30 March 2019 and before 1 October 2019 or a quarter that starts on 1 April 2019 or on 1 July 2019.

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Deferred Rental:

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.

Can the landlord hold the bond until deferred rent has been paid?

Depending on the terms of the lease or other agreement reached the landlord might be able to hold the security deposit until after the tenant has finished paying the deferred rent.

Is mediation at the Small Business Commission binding?

If a landlord and tenant reach agreement at mediation, they can sign terms of Settlement which will be binding but the mediator cannot make any determination.

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 Regulations.

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 has stated that if a business qualifies for JobKeeper payments for the first fortnight due to the required 30% decline in turnover the business remains eligible and does not need to keep testing turnover in the following months,

However, the business will need to provide their current and projected turnover to the ATO each month.

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