

RENTAL REDUCTION LETTER FOR COMMERCIAL LEASES PLUS NEGOTIATION DATA CAPTURE

This letter may be used to assist clients to create a legally binding rental reduction and repayment letter.

**IMPORTANT INFORMATION ABOUT THIS DOCUMENT**

This letter has been designed to encourage a commercial landlord and tenant to come to an arrangement based on the Federal and State Government’s Mandatory Code of Conduct for commercial leases as a consequence of COVID-19. The Government states:

*“The Code of Conduct applies principles to negotiating amendments in good faith to existing leasing arrangements – to aid the management of cashflow for SME tenants and landlords on a proportionate basis – as a result of the impact and commercial disruption caused by the*

*economic impacts of industry and government responses to the declared Coronavirus*

*(“COVID-19”) pandemic.”*

**Importantly any agreement must be a legally binding agreement that coexists with the existing lease and fit within the framework of the Code or the Landlord can exercise their rights at the end of the COVID-19 disruption. This will impact Guarantors and security deposits!**

From a legal perspective the Rental Reduction agreements used by LightYear Docs have been prepared and reviewed and signed off by Abbott & Mourly lawyers so there is no legal professional privilege issues in producing the *Rental Reduction Agreements* for your client from the attached data capture

**Legal Sign Off Option if Desired**

If you would like to book in a time for a negotiation via a Zoom meeting between both the Landlord and the tenant, covering all of the key parameters of the Government Code please contact tanamourlis@abbottmourly.com.au to book a time. The fee for a one hour consultation is $495 with draft Rental Reduction agreement to be reviewed and signed off by Abbott & Mourly lawyers.

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Date

Client Name

Address

City, State, Postcode

Dear Mr./Ms. [Client Name]:

**Mandatory Government Commercial Lease Amendments now in Force**

We are writing to you as a party to a commercial lease agreement. Existing agreements are now subject to agreed Federal and State Government’s mandatory code of conduct (‘the Code’) operative from 3 April 2020 until the end of the Government’s JobKeeper programme. The objective of the Code is for landlords and tenants to share the financial risk and cash flow impact during the COVID-19 period in a fair and transparent manner.

The Code applies to:

*“all tenancies that are suffering financial stress or hardship as a result of the COVID-19 pandemic as defined by their eligibility for the Commonwealth Government’s JobKeeper programme, with an annual turnover of up to $50 million (herein referred to as “SME tenants”).”*

**What you need to do**

Landlords and tenants must negotiate appropriate, temporary amendments to their leases having regard to the Code and to the tenant’s particular circumstances. It is legally prudent, and highly recommended, for both the tenant and the landlord, that the negotiated terms be documented in a legally binding Rental Reduction agreement. The agreement, drafted in line with the Code must cover the following:

1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.
3. Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals (as outlined under “definitions,” below) of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant’s trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.
4. Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle #3 above over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant’s capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord’s financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement.
5. Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.
6. Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease.
7. A landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association’s COVID-19 response, or any other case-by-case deferral of loan repayments offered to other Landlords, with the tenant in a proportionate manner.
8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances.
9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period.
10. No fees, interest or other charges should be applied with respect to rent waived in principles #3 and #4 above and no fees, charges nor punitive interest may be charged on deferrals in principles #3, #4 and #5 above.
11. Landlords must not draw on a tenant’s security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19 pandemic and/or a reasonable subsequent recovery period.
12. The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period outlined in item #2 above. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes.
13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant.
14. Landlords may not apply any prohibition or levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

We have collaborated with commercial lawyers Abbott & Mourly to provide to Landlords and Tenants a legally binding Rental Reduction Agreement that sits alongside the current existing commercial lease agreement between the parties.

**The Three Step Process is simple**

1. The Tenant and the Landlord negotiate COVID-19 revised terms using the data capture form attached, send back to us as soon as possible so we can work with Abbott & Mourly to draft your Rental Reduction Agreement in line with the 14 Mandatory Code of Conduct principles.
2. We will forward both parties the Rental Reduction Agreement for review and any amendment.
3. We will organise a zoom video-conference for both parties to sign the final Rent Reduction agreement electronically or organise for copies to be prepared and cross signed by post.

If a SME tenant has applied for JobKeeper, then it is mandatory to apply the Code of Conduct from 3 April 2020 unless the tenant waives their rights. As such, time is of the essence and each passing day has a monetary impact. If you need help in the negotiating process we are happy to be of assistance. Failure to complete a Rental Reduction Agreement leaves both the Landlord and Tenant exposed.

Sincerely,

Name of Professional

DATA CAPTURE – RENTAL REDUCTION AGREEMENT

1. **What is the reduction in turnover by the tenant as notified to the ATO under the JobKeeper programme?**

This amount, expressed in a percentage in the box below, will apply to reduce rent and outgoings on a proportionate approach with a minimum 50% reduction to be applied. If turnover has dropped less than 50% please note the actual amount notified to the ATO and we will adjust the agreement in line with the mandatory Code of Conduct.

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1. **Rent Waiver**

Do the Landlord and Tenant agree to waive the Rental Waiver? (NB the rent abatement agreement must include a rental waiver of at least 50% unless the Landlord and Tenant agree to waive this requirement) YES or NO?

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If NO, what proportion of the rent abatement shall be in the form of a rental waiver?

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1. **Optional Repayment over time**

Will the reduced rent be repaid over the remainder of the existing lease and on what basis? The term for repayment is a minimum of 24 month

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1. **Will the lease be extended?**

Will the existing term of the lease be extended? And if so by until what date?

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