



Guidance and Information Sheet

Rent reduction Requests resulting from Covid-19 Pandemic

Issued at 1430 3rd April 2020.

1 Purpose and standing of this document

There have been a number of enquiries received by the VicTas Synod from church entities regarding their legal position as landlords of commercial, retail and residential properties in the light of the COVID-19 crisis.

This guidance sheet is provided to assist congregations and presbyteries to understand the current position with respect to commercial, retail and residential tenancies as a result of COVID-19 in Victoria and Tasmania.

2 The (Current) Legal and Government “Direction” Framework

2.1 Government Announcements and Direction

Following the National Cabinet announcement by the Prime Minister on 29 March 2020 there seems to have been a general agreement reached by State and Territory governments to place a temporary (6 month) ban on evictions of people and businesses that are unable to meet their lease rental commitments due to financial stress.

The Prime Minister indicated that the precise measures for commercial leases would require further work by the Federal, State and Territory governments. The National Cabinet on 29 March 2020 issued a statement of principles ‘to underpin and govern intervention to aid commercial tenancies’ (**National Principles**). Leasing is a state matter and implementation of the National Principles or any ‘model rules’ will need to be through state legislation. In the interim, the Prime Minister suggested that landlords and tenants communicate with a view to reaching a fair compromise in what are difficult and exceptional circumstances.

In relation to residential tenancies, Tasmania has introduced measures which prohibit the eviction of tenants until 30 June 2020. It seems that the Victorian government will introduce measures in the very near future to prevent evictions of tenants suffering financial hardship. The precise details of the Victorian regulations have not been announced. Key points may be how “financial hardship” is defined and proven and whether other forms of evictions are permitted (eg for tenants who have deliberately damaged rental premises).

The 29 March National Cabinet Statement can be accessed here:

<https://www.pm.gov.au/media/national-cabinet-statement>

Please Note: It is anticipated that a further National Cabinet announcement will be made on commercial lease treatment and approach shortly. This note will be revised re-issued as soon as possible after such an announcement.

2.2 Legal situation

Until the announced measures are actually known and come into force, the law up to now would seem to be as follows.

2.2.1 Victoria

At present the relationship between landlord and tenant continues to be governed by the actual terms of the lease subject to any relevant legislation such as the Residential Tenancies Act or the Retail Leases Act and the common law. The Residential Tenancies Act (Vic) and the Retail Leases Act (Vic) are still operating in the same way they have pre-COVID 19 ie: if you don't pay the rent (and any outgoings), the landlord is (legally speaking) entitled to serve a notice to vacate and any other remedies under the relevant legislation. Landlords may agree to defer rental payments or a full or partial rent abatement, but this is currently at the Landlord's discretion.

This is also not an opportunity for either tenants or landlords to flout, ignore or avoid adherence to other terms of lease arrangements.

2.2.2 Tasmania

In relation to **residential tenancies**, the Tasmanian government has introduced legislation which provides that notices to vacate will have no effect until 30 June 2020. This date will be reviewed in 90 days. Those tenants suffering from severe hardship may apply to the Residential tenancy Commissioner for the lease to be terminated. See more details on:

<https://www.cbos.tas.gov.au/topics/housing/residential-tenancies-covid-19-emergency-provisions>

At present, the Tasmanian position for **retail and commercial tenancies** appears to be similar to Victoria.

3 Considerations and actions if a rent relief request is made.

If a tenant is suffering from financial hardship due to the COVID-19 crisis, congregations may wish to exercise compassion and voluntarily reduce, defer or abate rent on a case by case basis if this is an option for those congregations.

Many requests are being made for rent relief of one form or another. At least some of these are clearly of an "ambit nature", so careful consideration and probing of any request or claim is necessary.

If an agent is appointed to manage the tenancy in question on your behalf – make them work for you – they should be supporting and acting on the Lessor's behalf, and larger chains will have well established approaches to (particularly) the residential tenancy environment.

The following notes may assist congregations when contacted by a tenant or managing agent in relation to residential tenancies:

1. Request written confirmation of the change in the tenant's financial circumstances (eg stand down notices, Centrelink registration etc).

2. If there are multiple tenants in a residence premises, determine how many in the household are or were employed and how many have in fact lost income.
3. Question as to people in the tenancy who may now be eligible for receipt of government support – which in the case of casual or part time employment, presently seems capable of providing more income on a guaranteed fortnightly basis than many casual or part time employees have been receiving whilst working. Government announcements in relation to childcare subsidies of 2 April 2020 may also have a positive effect on net household financial capacity.
4. Remember, your obligations as landlord to maintain essential services (as defined in residential leases [such as heating, hot water etc], and Essential Safety Measures (in relation to commercial premises) continue.
5. It is likely that general Lessor Repairs and Maintenance obligations will be relaxed during this period – but this is not yet formally advised.
6. Relief to a tenant may:
 - a. Not be provided if hardship is not proven to your satisfaction – be clear when advising a refusal that this is the reason. As a general comment, it seems that a 30% reduction in revenue or income has been used elsewhere as an indicator of significant change.
 - b. Be provided at a rate different to that requested
 - c. Be Limited in duration e.g. 3 months at x% rent reduction – with a review to follow
 - d. Be provided as an abatement – i.e. never to be repaid
 - e. Be given as a temporary reduction with a payment plan to make up the foregone rent at some point in the future
 - f. include an extension to the lease by a period equivalent to the duration of any relief provided
 - g. comprise a combination of the above or any other terms that may be commercially agreed
7. Arrangements between a Lessor and Tenant must be:
 - a. Subject to approval of the owner (the relevant UCA Property Trust)
 - b. Documented in writing and
 - c. Subject to hardship continuing to be experienced
 - d. Reviewed regularly

As a *general* guideline, examples of those tenants who could be said to be suffering financial stress would be as follows:

Residential tenant: A single parent who is a tenant who has just lost her part-time retail job and has had to apply to Centrelink for support.

Retail tenant: A business such as a gymnasium or yoga studio which has been forced by government regulations to close down immediately.

By contrast, examples of where a congregation would have to exercise caution and require some detailed evidence of hardship could be as follows:

Residential tenant: A couple in secure government jobs who claim financial hardship and just want their rent reduced.

Commercial tenant: A not for profit organisation which obtains 100% or close to 100% of its revenue stream from government funding and now wants a reduction in rent for 6 months.

4 Process by which to gain approval for a variation to lease arrangements

All variations to lease will require an approval for the change. We have simplified this process specifically for Covid-19 related variations to leases.

How to do this:

1. Complete the Covid-19 Lease Variation Form (an editable PDF form) that will be provided by email to you as soon as it is prepared.
2. Send the completed PDF form (which may be completed, filled and saved on-line) with a Subject Line of “Covid-19 Lease Variation Request” to your Presbytery PMA (or equivalent)
3. Presbytery record approval (if given) to the change by completing their part of the form
4. Presbytery then on-send the form to Property@victas.uca.org.au
5. The Property Officer will then approve the variation and advice will be emailed to the Presbytery and congregation by email. PART will ratify and formally note the variation at future meetings on a rolling basis.

5 Summary

New measures, when introduced, will substantially change the law when implemented. Those changes are expected to be introduced in the next few days and the above information will then need to be reviewed in the light of the government’s requirements.

Whilst compassion should be exercised where appropriate, the current crisis should not be used by those who are not suffering financial hardship as a rent reduction opportunity.

All other terms of the relevant lease /tenancy agreement should continue to apply (eg maintenance of premises, quiet use and enjoyment etc) unless and until State Governments announce changes that formally amend the parties’ obligations under either residential or commercial/retail leases.

6 Resources / Further Questions or Support?

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