



Australian Government

**SM20/0231/NATCAB
20 March 2020**

CABINET MINUTE NATIONAL CABINET

Oral Update	SM20/0231	CORONAVIRUS UPDATE
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The National Cabinet for Australia's Coronavirus Response:

1. Noted:

- (a) the Commonwealth Government's ('the Commonwealth') decision to stop the entry of all people who are not Australian citizens or permanent residents or their immediate families into Australia from 9pm AEDST on Friday 20 March 2020 in order to align international travel restrictions with the risks
- (b) the oral update by the Governor of the Reserve Bank and the Secretary of the Department of the Treasury on the economic impact of the Coronavirus pandemic
- (c) the oral update by the Prime Minister on the development of the next package of Commonwealth support
- (d) that the Commonwealth and the States and Territories would delay their 2020-21 Budgets owing to significant difficulties faced by all governments in respect of economic forecasting.

2. Agreed that:

- (a) New South Wales and Western Australia will develop options for assistance for tenants in commercial premises, particularly small and medium businesses, for consideration by the National Cabinet on Tuesday 24 March

- (b) Victoria and South Australia will develop options for assistance for tenants in residential properties for consideration at a future meeting of the National Cabinet.
- 3. Noted the Australian Health Protection Principal Committee (AHPPC) advice on high-risk countries for COVID-19 importation risks and its continued support for the strict 14-day quarantine requirement for all returning travellers.
- 4. Agreed the AHPPC advice regarding child care centre closures and noted that 'pre-emptive closures are not proportionate or effective as a public health intervention to prevent community transmission of COVID-19 at this time'.
- 5. Agreed that the Prime Minister and the Chief Medical Officer should continue to:
 - (a) emphasise strongly the AHPPC advice in relation to residential aged care facilities
 - (b) provide clear public messaging on the need for more vulnerable Australians, including older Australians, to protect themselves by avoiding gatherings and unnecessary travel outside the home.
- 6. Agreed that work be undertaken on the potential workforce implications of further restrictions to protect older Australians, including further advice from the AHPPC, for consideration at a future meeting.
- 7. Agreed that for non-essential indoor gatherings of 100 or fewer people:
 - (a) density requirements as recommended by the AHPPC of 1 person per four square metres would be adopted
 - (b) these arrangements would be made public by the Prime Minister on 20 March 2020
 - (c) States and Territories would mandate this regulatory requirement as soon as practicable
 - (d) these regulatory requirements could be strengthened should local health conditions require.
- 8. Agreed:
 - (a) the AHPPC advice that the risk of acquiring COVID-19 on passenger aircraft is low but that unnecessary domestic air travel should be avoided in order to minimise the spread of infection over long distances

- (b) to consider domestic travel further at the next scheduled meeting on 24 March meeting, prior to the commencement of school holidays, with further advice to be provided by the AHPPC in relation to all modes of domestic travel.
9. Noted the oral update by the Prime Minister on actions taken to support continued operation of schools across all sectors.
10. Agreed that States and Territories would issue public health directions on visitor restrictions for aged care facilities to complement regulatory standards put in place by the Commonwealth.
11. Agreed that:
- (a) each jurisdictional adult correctional system will restructure personal prison visits to help manage the risk posed to prisoners and staff by the introduction of COVID-19 into custodial facilities
 - (b) depending on operational needs, this may include stopping visits in some jurisdictions.
12. Agreed in-principle to the Commonwealth Minister for Health taking action under the Commonwealth *Biosecurity Act 2015* to restrict travel into remote Indigenous communities to prevent the spread of COVID-19, with:
- (a) States and Territories to nominate areas in consultation with Indigenous communities as a matter of priority
 - (b) the application of these restrictions and their enforcement to take into account the need to continue to protect women and children from domestic violence.
13. Agreed to:
- (a) continue strong public messaging by all governments regarding hoarding and panic buying
 - (b) work through the National Coordination Mechanism to identify any further actions that may be required to stop out-of-area shoppers depleting regional communities of food, grocery and medical items.
14. Noted the need to continue efforts to increase capacity in hospitals.
15. Agreed the AHPPC return to the National Cabinet with advice on:
- (a) thresholds for responding to and controlling localised outbreaks of COVID-19
 - (b) critical care capacity
 - (c) data on COVID-19 cases to assist local-level responses and identify points of stress in the system.

16. Agreed to meet each Tuesday at 6.30pm (AEDST) and each Friday at 10.00am, unless otherwise required.

Cabinet Secretary



Australian Government

NATIONAL CABINET

AGENDA VERSION 2

Tuesday 24 March 2020

6.30PM to 9PM

Canberra - Parliament House Briefing Room via Telepresence (ACT)

NO	RESPONSIBLE
1. Strategic Discussion (<i>Oral Update SM20/0271</i>)	Prime Minister Premiers and Chief Ministers
2. Coronavirus Update (<i>Oral Update SM20/0266</i>)	Dr Murphy
3. Restrictions on Social Gatherings (<i>Other SM20/0272 refers</i>)	Prime Minister Premiers and Chief Ministers Dr Murphy
4. Managing Critical Health and Hospital Resources (<i>Other SM20/0270 refers</i>)	Prime Minister Premiers and Chief Ministers
5. Nationally Consistent Public Directions on Self-Isolation for Individuals Diagnosed with COVID-19 (<i>Other SM20/0269 refers</i>)	Premier Victoria
6. Options for Commercial Tenancies (<i>Other SM20/0268 refers</i>)	Premier New South Wales Premier Western Australia
7. Emerging Issues/Future Agenda Items (<i>Oral Update SM20/0265</i>)	Prime Minister Premiers and Chief Ministers

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Published Agenda

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NATIONAL CABINET

AGENDA VERSION 2

Wednesday 25 March 2020

6.30PM to 9PM

Canberra - Parliament House Briefing Room via Telepresence (ACT)

NO		RESPONSIBLE
1.	Items Held Over from 24 March	
(a)	Updated AHPPC Advice - 24 March (<i>AHPPC advice of 24 March refers</i>)	Dr Murphy
(b)	Managing Critical Health and Hospital Resources (<i>AHPPC advice of 24 March refers</i>)	Prime Minister Premiers and Chief Ministers
(c)	Options for Commercial Tenancies (<i>Other SM20/0268 refers</i>)	Premier New South Wales Premier Western Australia
2.	AHPPC Advice of 25 March (<i>AHPPC advice to be circulated</i>)	Dr Murphy
3.	Thresholds for Next Stage of Restrictions (<i>Oral Update SM20/0285</i>)	Dr Murphy
4.	National Medical Procurement Process (<i>Other SM20/0286 refers</i>)	Prime Minister

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Australian Government

SM20/0266/NATCAB/2
25 March 2020

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CABINET MINUTE

NATIONAL CABINET

Oral Update	SM20/0266	CORONAVIRUS HEALTH UPDATE
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The National Cabinet:

1. Noted the announcement of the establishment of the National COVID-19 Coordination Commission and the oral update from the Chairman, Mr Neville Power.
2. Noted the oral update from the Prime Minister on his discussions with the Australian Education Union on schools.
3. Agreed that States and Territories will keep the school sector open as long as possible through to the end of Term 1 to provide schooling, particularly for children from vulnerable families.
4. Agreed to begin work immediately on nationally consistent standards to apply after the school break for online/distance education and school-based education for children from vulnerable families, with the work to be led by the Commonwealth Minister for Education and his State and Territory ministerial colleagues, and to:
 - (a) provide a plan for the remainder of the school year, based on advice from professional educators
 - (b) address industrial issues
 - (c) address health and safety issues

- (d) cover arrangements for special needs, Indigenous and remote community children
 - (e) cover professional education support.
5. Endorsed the recommendation for States and Territories to suspend all non-urgent elective surgery.
 6. Agreed to extend the deadline for the suspension of semi-urgent Category 2 and Category 3 elective surgeries at private hospitals for 7 days.
 7. Agreed that States and Territories will continue to work with private hospital groups through existing contract negotiations.
 8. Noted that the Commonwealth would not get involved in these negotiations and that the private hospitals understand that the Commonwealth will not provide assistance if negotiations with states and territories are not resolved by 1 April 2020.
 9. Noted the Prime Minister will share a daily situation update with the National Cabinet.
 10. Noted the Australian Health Protection Principal Committee (AHPPC) advice of 24 March and agreed to the expansion of COVID-19 testing criteria.
 11. Noted the AHPPC advice on critical care expansion capacity and agreed that the AHPPC provide further advice on critical care capacity under medium to worst-case scenarios.
 12. Noted that a “heat map” of beds in intensive care units (ICU) is being developed and will be reported to each meeting of the National Cabinet.
 13. Requested the Chief Medical Officer (CMO) provide updated modelling on the COVID-19 scenarios, taking into consideration the measures and restrictions introduced to date.
 14. Agreed that States and Territories would return to the National Cabinet on 27 March 2020 with one-page jurisdictional updates on enforcement regimes in place to support social isolation and social distancing measures.
 15. Commenced consideration of the AHPPC advice on triggers to move to the next phase of social distancing and agreed that the CMO and the Chief Health Officers of the three eastern border states would develop further advice on triggers for consideration by the National Cabinet at their 27 March 2020 meeting.
 16. Commenced consideration of the AHPPC advice on cancer screening programs and requested the AHPPC provide further advice on triaged options for screening programs, as well as advice on how options impact on COVID-19 testing capacity.

17. Adopted the advice of the AHPPC on school immunisation programs and agreed that States and Territories would manage them under their jurisdictional arrangements.
18. Agreed the AHPPC recommendation on dental services.
19. Commenced consideration of the proposed publication of COVID-19 data, with the CMO to bring back a proposal detailing what the publication would look like and how the proposed analysis would be presented.
20. Requested advice from the AHPPC on options for reducing demand for ICU beds from non COVID-19 cases.
21. Noted the oral updates from the Premiers of New South Wales and Western Australia and the Prime Minister on options for commercial tenancies and agreed to discuss this issue further at the 27 March 2020 meeting.
22. Agreed to consider, at a future meeting, mental health issues associated with the impact of COVID-19.
23. Commenced consideration of the national medical procurement process and noted that further advice would be provided on the allocation of resources based on need.
24. Agreed the Prime Minister would release a short statement on private hospitals and expanded testing criteria decisions.
25. Agreed that the 10-person limit for funeral services applies to mourners only and the States and Territories can issue individual exemptions.

Original authorised by

Cabinet Secretary



Australian Government

NATIONAL CABINET

AGENDA VERSION 3

Friday 27 March 2020

10AM to 12PM

Canberra - Parliament House (ACT)

NO		RESPONSIBLE
1.	Strategic Discussion	
2.	Economic Issues	
(a)	Economic Update (<i>Oral Update SM20/0307</i>)	Dr Kennedy
(b)	Residential Tenancies (<i>Other SM20/0300 refers</i>)	Premier Victoria Premier South Australia
3.	Health Issues	
(a)	Coronavirus Update (<i>Oral Update SM20/0311</i>)	Dr Murphy
(b)	Returning Travellers (<i>Oral Update SM20/0312</i>)	Prime Minister Dr Murphy
(c)	State Enforcement Regimes (<i>Other SM20/0310 refers</i>)	Premiers and Chief Ministers
(d)	Thresholds for Further Restrictions (<i>Other SM20/0309 refers</i>)	Dr Murphy
(e)	Updated COVID-19 Modelling (<i>AHPPC Advice</i>)	Dr Murphy
4.	Emerging Issues/Future Agenda Items (<i>Oral Update SM20/0314</i>)	Prime Minister Premiers and Chief Ministers
5.	Other Business	
(a)	Schools Statement	Prime Minister

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(Other SM20/0313 refers)

Premiers and Chief
Ministers

- (b) Private Hospitals
(Oral Update)

Prime Minister
Premiers and Chief
Ministers

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Australian Government

SM20/0266/NATCAB/3

27 March 2020

CABINET MINUTE

NATIONAL CABINET

Oral Update	SM20/0266	CORONAVIRUS HEALTH UPDATE
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The National Cabinet for Australia's Coronavirus Response ('the National Cabinet'):

1. Noted the oral update by the Prime Minister on the G20 Leaders' discussions overnight and the development of a third Commonwealth Government economic package.
2. Noted the oral presentation by the Secretary of the Commonwealth Treasury Department on the potential economic and workforce implications arising from different levels of social distancing restrictions and business closures.
3. Agreed that Treasurers, through the Heads of Treasuries process, share and refine work on the economic impacts of COVID-19 responses, including additional analysis of the interactions between health and economic assumptions and modelling.
4. Agreed:
 - (a) assistance provided to commercial tenants should be guided by the underlying principle of 'business hibernation'
 - (b) Treasurers be tasked with finalising agreed proposals on commercial and residential tenancies for National Cabinet consideration at its next meeting.

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PROTECTED CABINET

5. Noted the Coronavirus health update by the Chief Medical Officer (CMO) and his advice that returning international travellers remain the most significant vector for the spread of Coronavirus in Australia.

6. Agreed that:

- (a) as soon as possible, but no later than 11:59pm AEDT Saturday 28 March 2020, all travellers arriving in Australia will be required to undertake mandatory 14 day self-isolation at designated facilities (for example, a hotel) in the city in which they entered Australia, notwithstanding their state of residence
- (b) travellers will be transported directly to designated facilities after appropriate immigration, customs and enhanced health checks
- (c) designated facilities will be determined by the relevant State or Territory government; while ordinarily they will be in the city of entry where the traveller has cleared immigration, facilities in other areas may be used in extenuating circumstances
- (d) these requirements will be implemented under State and Territory legislation and will be enforced by State and Territory governments, with the support of the Australian Border Force (ABF) and the Australian Defence Force (ADF) where necessary and according to need across Australia
- (e) States and Territories would meet the costs (other than for ABF and ADF support) and determine any contributions required from travellers arriving within their jurisdictions.

7. Agreed that the ADF will begin assisting State and Territory governments to undertake quarantine compliance checks of those who are required to be in mandatory isolation after returning from overseas, with enforcement remaining the responsibility of States and Territories.

8. Agreed that the Commonwealth would ensure ABF declaration card information on returning international travellers who reside in jurisdictions other than their city of arrival is provided to the appropriate jurisdiction.

9. Noted:

- (a) the advice provided by all jurisdictions on their current enforcement regimes and activities and agreed the importance of continued strong enforcement of existing social isolation and social distancing measures
- (b) the advice from the Commonwealth, New South Wales, Victorian and Queensland Chief Health Officers on next step measures.

10. Agreed:

- (a) Queensland, New South Wales and Victoria will develop options for further restrictions to support social distancing and reduce community transmission for consideration at the next meeting
- (b) Western Australia will convene a discussion with Tasmania, South Australia and the Northern Territory to consider options for further restrictions that might be appropriate for jurisdictions with different epidemiological and geographic circumstances
- (c) the importance of ensuring that any further restrictions on business be accompanied by further economic support measures.

11. Noted:

- (a) the further advice from the Australian Health Protection Principal Committee in relation to the supply of intensive care unit (ICU) beds nation-wide and surge capacity (including related equipment, consumables and workforce)
- (b) the CMO's advice that ICU surge capacity is likely to meet predicted need.

12. Agreed that a paper setting out principles and protocols for the allocation and sharing of critical medical supplies be provided to the National Cabinet for consideration at its next meeting.

13. Agreed the statement on schools.

14. Agreed that States and Territories urgently finalise arrangements with private hospitals under the COVID-19 National Partnership Agreement and report on outcomes at the National Cabinet meeting on 29 March 2020.

Cabinet Secretary



Australian Government

NATIONAL CABINET

AGENDA VERSION 1

Sunday 29 March 2020

3PM to 6PM

Canberra - Parliament House Briefing Room via Telepresence (ACT)

NO		RESPONSIBLE
1.	Strategic Update (Other SM20/0324 refers)	Prime Minister
2.	Economic Issues	
(a)	Update on Third Economic Package (Oral Update SM20/0330)	Prime Minister
(b)	Commercial and Residential Tenancies (Other SM20/0332 refers)	Prime Minister Premiers and Chief Ministers
3.	Health Issues	
(a)	Coronavirus Update (Other SM20/0328 refers)	Dr Murphy
(b)	Returning Travellers - Implementation Update (Oral Update SM20/0327)	Prime Minister Premiers and Chief Ministers
(c)	Defining Further Restrictions (Other SM20/0326 refers)	Premier New South Wales Premier Victoria Premier Queensland
(d)	Protocols on Allocating Critical Medical Supplies (Short-form Cabinet Paper SM20/0325 refers)	Dr Murphy
4.	Other Business (Oral Update SM20/0329)	

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Australian Government

SM20/0266/NATCAB/4
29 March 2020

CABINET MINUTE

NATIONAL CABINET

Oral Update	SM20/0266	CORONAVIRUS HEALTH UPDATE
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The National Cabinet for Australia's Coronavirus Response ("National Cabinet"):

1. Noted the oral update by the Prime Minister on:
 - (a) the successful implementation by jurisdictions, supported by the Commonwealth, of the compulsory quarantine arrangements for returning travellers
 - (b) the \$1.1 billion Commonwealth package announced that day to support more mental health, Medicare, domestic violence and relief services
 - (c) progress on the development of the third tranche of the Commonwealth Coronavirus Support Package.
2. Agreed to a moratorium on evictions over the next six months for commercial and residential tenants in financial distress who are unable to meet their commitments owing to the impact of the Coronavirus.
3. Agreed interventions to aid commercial tenancies would include the following common characteristics, as endorsed by Treasurers:
 - (a) a mechanism (or definition) to determine rental distress
 - (b) tenants and landlords are to be encouraged to agree on rent relief or temporary amendments to the lease

- (c) the reduction or waiver of rental payments for a defined period for impacted tenants
 - (d) the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress
 - (e) commercial property owners to ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by Coronavirus
 - (f) landlords and tenants not significantly affected by Coronavirus are expected to honour their lease and rental agreements
 - (g) cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.
4. Also agreed that the final arrangements should be based on two underlying principles:
- (a) hibernation
 - (b) shared pain, including for tenants, landlord and banks.
5. Agreed that State and Territory Treasurers come back as soon as possible with standard documentation to facilitate a common approach to negotiations between landlords, tenants and the banks, to minimise legal and other advisory costs.
6. Agreed that States and Territories develop and implement appropriate, targeted interventions in commercial rental markets according to these principles and provide a progress report to National Cabinet on implementation as soon as possible.
7. Agreed that the Commonwealth would lead negotiations with financial institutions.
8. Agreed that further work be undertaken by Treasurers on residential tenancies.
9. Agreed, based on advice from the Australian Health Protection Principal Committee, that strong advice be provided to older Australians to self-isolate at home to the maximum extent practicable, with this advice to apply to:
- (a) those aged 70 years and over

- (b) those aged 60 years and over with existing health conditions or comorbidities
- (c) Indigenous Australians over the age of 50 years with existing health conditions or comorbidities.

10. Agreed to issue strong guidance to all Australians to stay at home unless for:

- (a) shopping for food, essential supplies and absolute necessities
- (b) medical or health care needs, including compassionate requirements
- (c) exercise, in compliance with social gathering restrictions
- (d) work and education, for anyone who cannot work or learn remotely.

11. Agreed to an enforceable national limit for both indoor and outdoor gatherings of no more than 10 people and strongly advised limiting gatherings to no more than 2 persons (other than for members of the same household), with individual jurisdictions choosing whether to mandate and enforce the lower level.

12. Agreed to maintain the current restrictions on funerals (maximum 10 people) and weddings (maximum of 5 people).

13. Agreed to close playgrounds, skate parks and outdoor gyms, discourage jogging/running/cycling in groups and reduce bootcamps to two persons including the trainer.

14. Commenced consideration of further restrictions to commercial enterprises to minimise the risk of community transmission and agreed to meet on 30 March to consider the advice of State and Territory Chief Medical Officers to enable individual jurisdictions to adopt a more flexible approach.

15. Noted the oral update by the Prime Minister and the States and Territories with respect to private hospital negotiations.

16. Noted the principles for the distribution of crucial medical supplies from the National Medical Stockpile and agreed the Commonwealth will provide further detailed advice on the level of medical supplies potentially available to States and Territories from Commonwealth stocks.

Cabinet Secretary



Australian Government

NATIONAL CABINET

AGENDA VERSION 2

Friday 03 April 2020

10AM to 12PM

Canberra - Parliament House (ACT)

NO		RESPONSIBLE
1.	Strategic Update	
2.	Health Issues:	
(a)	Coronavirus Update (Other SM20/0381 refers)	Dr Murphy
(b)	National COVID-19 Testing Capacity (Oral Update SM20/0384)	Dr Murphy
(c)	Public Presentation of COVID-19 Data - Come Back (Paper)	Dr Murphy
(d)	Options For Reducing ICU Bed Demand From Non COVID-19 Cases (Paper)	Dr Murphy
3.	Economic Issues	
(a)	Commercial and Residential Tenancies (Paper)	Prime Minister Premiers and Chief Ministers
(b)	Support to Childcare Sector (Commonwealth Paper; State/Territory Paper to be circulated)	Prime Minister Premiers and Chief Ministers
4.	Other Business (Other SM20/0387 refers)	Mr Morrison

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Australian Government

SM20/0266/NATCAB/6

03 April 2020

CABINET MINUTE

NATIONAL CABINET

Oral Update	SM20/0266	CORONAVIRUS UPDATE
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The National Cabinet for Australia's Coronavirus Response:

1. Noted:

- (a) the oral update by the Chief Medical Officer (CMO) on the latest epidemiological data, including the growth in locally acquired cases where the contact has not been identified
- (b) the Australian Health Protection Principal Committee (AHPPC) paper on national COVID-19 testing capacity and the CMO's advice on the current precarious nature of supply and the need to broaden testing criteria judiciously
- (c) the oral update by the Prime Minister and the CMO on preliminary health system capacity modelling which recognised stricter social distancing.

2. Agreed to consider final updated modelling at the next meeting on 7 April 2020, with the modelling to be provided to all jurisdictions the day before.

3. Noted Australia is now in the suppression phase of the response, which will last for some time, and that restrictions in place would be reviewed regularly against the national baseline and epidemiological outcomes.

4. Agreed the Commonwealth come back with a proposed schedule and process to support National Cabinet's regular review of the baseline restrictions and economic supports in place to ensure that they remain appropriate as circumstances evolve.

5. Agreed the need to establish a clear plan and narrative on for the health and economic management of the COVID-19 outbreak in the short, medium and long term which recognises a progression from suppression to emergence and then recovery from the virus event and its economic impacts.

6. Agreed:

- (a) the AHPPC, in consultation with education experts, prepare more prescriptive advice on the approach to, and management of, COVID-19 in the education sector for consideration at the 9 April 2020 meeting
- (b) Education Ministers, led by the Commonwealth Education Minister, provide advice on future school-based and online learning arrangements for the remainder of the school year and the implications of that advice for the future (bringing forward the requested comeback from the 25 March 2020 meeting).

7. Agreed to publicly release:

- (a) the Coronavirus COVID-19 in Australia dashboard at 4pm AEST daily, including data on cases, deaths, hospitalisations and tests by jurisdiction, with an accompanying one-page official analysis
- (b) the Commonwealth Department of Health national heat map showing the geographic distribution of COVID-19 active cases.

8. Noted the AHPPC paper on options for reducing ICU bed demand from non-COVID-19 cases and agreed not to publish this advice.

9. Reaffirmed the decision for a six-month moratorium on evictions for residential tenants in financial distress and agreed that further work be undertaken by the States and Territories on this issue for future National Cabinet consideration.

10. Considered the paper from the Board of Treasurers on commercial leases and agreed:

- (a) it did not go far enough in providing concrete measures for implementation

- (b) a mandatory code of conduct guided by agreed principles be developed and subsequently legislated, if required, by State and Territory Governments to apply to tenancy agreements, where:
 - (i) the tenant is eligible for the Commonwealth Government's JobKeeper assistance and
 - (ii) is a small- or medium-sized enterprise (less than \$50 million turnover)

with the proposed code of conduct to be brought forward by the Commonwealth for discussion at the 7 April 2020 meeting.

11. Noted:

- (a) the paper on the viability of, and regulatory support for, the early childhood education and care sector, including the funding support announced by the Commonwealth Government and the agreements made by Education Ministers to reduce regulatory burden in the childcare sector in response to COVID-19
- (b) the AHPPC statement on Childcare and Early Learning Centres.

12. Agreed that National Cabinet members, consistent with earlier decisions restricting unnecessary travel, emphasise that Australians should stay at home this Easter.

13. Agreed that places of worship, when live-streaming religious services, be treated as workplaces and further requirements be applied by States and Territories.

14. Agreed the Commonwealth circulate the amended National Partnership Agreement on COVID-19 to States and Territories for their expeditious consideration.

15. Noted the JobKeeper package does not apply to local government and that States and Territories will work to support local governments as appropriate.

16. Noted the oral update by the Prime Minister on proposals to enable agricultural producers to retain their overseas workforce, subject to:

- (a) strict enforcement of employers requiring such workers to self-isolate for fourteen days before commencing work and
- (b) strict adherence to public health measures, including social distancing on farms and in private accommodation.

17. Agreed the Prime Minister come back to the next meeting of the National Cabinet with further detail on these proposed arrangements.

18. Agreed the CMO come back with advice on actions taken by Japan and South Korea in their responses to restraining COVID-19 infections.

19. Noted the oral update by the Prime Minister on critical international air passenger services which will operate over the next four weeks from Peru, Argentina and South Africa and that the Commonwealth will support flights for four weeks from London, Los Angeles, Hong Kong and Auckland to bring Australians home and facilitate essential airfreight.

20. Agreed the CMO come back to the next meeting with AHPPC statements for noting on the following issues:

- (a) point of care serology testing
- (b) off-label use of drugs to manage COVID-19
- (c) PPE for health care workers
- (d) home isolation guidelines.

21. Agreed that future National Cabinet meetings would:

- (a) next be scheduled on Tuesday 7 April and Thursday 9 April 2020
- (b) thereafter be held on Tuesday and Friday mornings, with other meetings scheduled if the need arises.

Cabinet Secretary



Australian Government

NATIONAL CABINET

AGENDA VERSION 1

Tuesday 07 April 2020

10AM to 12PM

Canberra - Parliament House Briefing Room via Telepresence (ACT)

NO		RESPONSIBLE
1.	Strategic Issues	
2.	Health Issues:	
(a)	Coronavirus Update (<i>Oral Update SM20/0398</i>)	Dr Murphy
(b)	Updated Modelling of Health System Capacity to Address COVID-19 (<i>Paper</i>)	Dr Murphy
(c)	Australian Health Protection Principal Committee Advice (<i>Paper</i>)	Dr Murphy
3.	Economic Issues:	
(a)	Commercial Tenancies Code of Conduct (<i>Paper</i>)	Prime Minister Premiers and Chief Ministers
(b)	Consistency in Quarantine Arrangements for Maritime Crews (<i>Oral Update SM20/0399</i>)	Prime Minister
(c)	Hardship Provisions across Energy, Water and Rates (<i>Oral Update SM20/0400</i>)	Prime Minister
4.	Other Business	

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Australian Government

SM20/0266/NATCAB/7

07 April 2020

CABINET MINUTE

NATIONAL CABINET

Oral Update	SM20/0266	CORONAVIRUS UPDATE
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The National Cabinet for Australia's Coronavirus Response:

1. Noted the oral update by the Prime Minister on the more positive health and economic data from the last week, including the generally positive response to the Commonwealth's JobKeeper package.
2. Noted the oral update by the Chief Medical Officer (CMO) on:
 - (a) the latest epidemiological data
 - (b) availability of testing kits and personal protective equipment (PPE)
 - (c) work under way by the Australian Health Protection Principal Committee (AHPPC) to inform future National Cabinet discussions on changes to baseline restrictions and other measures.
3. Noted the updated theoretical modelling of health system capacity to address COVID-19, including the accompanying glossy publication, PowerPoint presentation and two academic manuscripts.
4. Agreed to:
 - (a) the public release of the glossy publication and PowerPoint presentation on modelling, once adjusted to clarify messaging as discussed by National Cabinet.
 - (b) publication of the two academic manuscripts on modelling on 7 April 2020.
5. Noted modelling based on Australian data is currently being developed and will be provided to National Cabinet before the end of April 2020.

6. Agreed the Prime Minister will return to National Cabinet after Easter with an update on the COVID-19 contact tracing application currently being developed by the Commonwealth.
7. Noted and agreed to publicly release the following AHPPC statements:
 - (a) Off-label Medicines for Treatment and Prophylaxis of COVID-19
 - (b) Healthcare Worker use of PPE when Caring for Suspected or Confirmed COVID-19 Patients
 - (c) Home Isolation
 - (d) Organ Donation and Transplantation during the COVID-19 Pandemic
 - (e) Rapid Point of Care Lateral Flow Devices to Detect Antibodies to SARS-COV-2.
8. Agreed that States and Territories would implement the Mandatory Code of Conduct for commercial tenancies (as amended) via legislation or regulation, as appropriate, with:
 - (a) a date of effect of 1 April 2020
 - (b) the Commonwealth to work with the Northern Territory on bespoke arrangements for implementation.
9. Agreed that residential tenancies are an issue for the States and Territories and would be progressed through the Board of Treasurers.
10. Noted the previously agreed AHPPC recommendation on quarantine and self-isolation for maritime crew and agreed to consider, at the next meeting, a draft uniform exemption for non-cruise maritime crew and guidelines for enforcement, including the role of the Australian Border Force.
11. Noted the oral update by the Prime Minister on the development of consumer hardship provisions for the energy and water sectors and agreed to consider the draft Principles for Hardship Provisions prepared by the Commonwealth and the energy sector paper prepared by the Commonwealth Minister for Energy and Emissions Reduction at the next meeting.
12. Noted the advice from the Prime Minister that the JobKeeper package is not available to childcare centres operated by local councils.

13. Noted the points raised by individual jurisdictions in relation to regional airports, cruise ships, overseas travel by Australians and streamlining of Ministerial Council discussions.

Cabinet Secretary

Measures to support SME tenants

Proposal

1. State and Commonwealth Governments to provide s47B, 47E(d)
[Redacted]
2. Land tax for this calendar year on commercial/retail properties with SME tenants (under \$50m) will be waived for the landlord, provided the landlord negotiates a revised rental agreement with the tenant that reflects current trading conditions. s47B, 47E(d)
[Redacted]
3. **In the event that a SME is still trading** State Governments will facilitate discussions between landlords, tenants and their representatives to reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their tenants **that reflect the current economic conditions.**
4. s47B, 47E(d)
[Redacted]
5. s47B, 47E(d)
[Redacted]
6. s47B, 47E(d)
[Redacted]
7. The Commonwealth Government will explore incentives through the tax system to reward landlords for the provision of any rent relief during this period.

Principles

1. Where appropriate losses should be shared by all parties (tenants and landlords).
2. Government should support incentives for loss sharing by all parties and make a contribution.
3. Business should be supported so they can survive the economic impacts of the COVID-19 pandemic.
4. Tenants should be able to demonstrate financial distress from COVID-19.

Desired Outcomes

1. State Governments have a primary role to play in creating appropriate incentives.
2. Commonwealth Government can provide additional support to reinforce State incentives through the tax system for landlords.
3. Commonwealth and State governments should lead by example (i.e. Government properties which are leased).
4. Landlords should be incentivised to negotiate temporary rent relief reduction s47B, 47E(d)
s47B, 47E(d)
5. Tenants should be incentivised to keep their business open, or modify it. No action should incentivise the shutdown of businesses.

6. Financers interact with Tenants and Landlords. There is already relief available for Tenants, this is fixed (e.g. SME Guarantee Scheme, Quick and Effective Access to Credit for Small Business).
7. Financers should, where possible and appropriate, support landlords who engage participate in sharing the temporary losses as a result of the economic shock.

What each party will be expected to contribute

Party	Contribution
State Government (Incentive setting and contribution)	s47B, s47E(d)
Landlord (Contribution)	Reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their tenants.
Tenant (Contribution)	Reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their Landlord.
Commonwealth Government (Incentive setting and contribution)	Incentives through the tax system to reward landlords for the provision of any rent relief during this period.
Financers (Incentive setting and contribution)	Support for SME landlords via access to credit.

In addition state and commonwealth governments will lead by example. State and Commonwealth Governments to s47B, 47E(d)



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Australian, State and Territory
Governments

National Cabinet for Australia's Coronavirus Response

Submission

Title	Commercial leases and land tax
Sponsoring Ministers	[Treasurers]

Summary

Proposed Action

That the National Cabinet **agree** to a mandatory [industry] code of conduct in relation to commercial leasing to be legislated by State and Territory Governments for tenancies where there is financial distress as a result of COVID-19 (for example, the tenant is eligible for the Commonwealth Government's JobKeeper assistance) and is a small- or medium-sized enterprise (less than \$50 million turnover), with the code of conduct incorporating the commercial leasing principles agreed at the National Cabinet meeting on Friday 3 April (which added the principle of proportionality). That National Cabinet **note** temporary land tax relief measures to be implemented by each State and Territory to help protect tenants experiencing financial distress due to the COVID-19 pandemic.

Key reasons

Agreement to the recommendations of this submission will enable States and Territories to legislate commercial tenancy relief measures and commit to a uniform approach to temporarily reducing the land tax burden for tenants affected by the COVID-19 pandemic. The mandatory [industry] code of conduct will ensure sufficient security for tenants and landlords that are affected by these arrangements and proportional burden sharing in aiming to get through the coronavirus crisis and restarting afterwards.

Key risks and sensitivities

Implementation of the agreed code of conduct will require States and Territories to make legislative amendments, which may be challenging given Parliament sittings have been postponed in some jurisdictions and this could potentially result in different dates of commencement across Australia.

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1 Proposed Actions

That the National Coronavirus Cabinet:

1. **Note** that:

- (a) The Board of Treasurer's leasing principles for the protection of commercial tenants experiencing financial distress because of the COVID-19 pandemic presented to National Cabinet on Friday 3 April have been incorporated into an [industry] code of conduct and supplemented by a proportionality principle in relation to rent reductions.
- (b) This code of conduct will be legislated by States and Territories for retail leases, which are the only regulated commercial leases.
- (c) s47C, s47E(d)

2. **Note** that the principles covered by the [industry] code conduct are as follows:

- (a) Where it can, rent should continue to be paid, and where there is financial distress as a result of COVID-19 (for example, the tenant is eligible for assistance through the JobKeeper program), tenants and landlords should negotiate a mutually agreed outcome
- (b) There will be a proportionality to rent reductions based on the decline in turnover to ensure that the burden is shared between landlords and tenants
- (c) There will be a prohibition on termination of leases for non-payment of rent (lockouts and eviction)
- (d) There will be a freeze on rent increases (except for turnover leases)
- (e) There will be a prohibition on penalties for tenants who stop trading or reduce opening hours
- (f) There will be a prohibition on landlords passing land tax to tenants (if not already legislated)
- (g) There will be a prohibition on landlords charging interest on unpaid rent
- (h) There will be a prohibition on landlords from making a claim to a bank guarantee or security deposit for non-payment of rent
- (i) Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord could agree a rent waiver in return for a lease extension).

3. **Agree** that:

- (a) for landlords and tenants that sign up to the code of conduct, States and Territories agree to provide the equivalent of at least a three month land tax waiver and three month land tax deferral on application for eligible landowners, with jurisdictions to continue to monitor the situation.
- (b) landlords must pass on the benefits of such concession to the tenants.

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- (c) where parties have signed up to the code of conduct, the ability for tenants to terminate leases as mentioned in the National Cabinet Statement on 29 March 2020 will not apply.
 - (d) mediation will be provided as needed through existing State and Territory mechanisms.
4. **Note** that this will apply to all properties within a portfolio that meet the criteria, irrespective of valuation or land use (ie commercial and residential).
5. **Note** that the agreed eligibility criteria for land tax relief are as follows (noting there will be some jurisdictional variation in implementation):
- (a) The landowner rents all or part of a property to a tenant/s OR all or part of a property is currently available for lease; AND
 - (b) At least one tenant's ability to pay their normal rent OR the landowner's ability to secure a tenant is affected by the pandemic; AND
 - (c) The landowner provides rent relief to affected tenant/s at least commensurate with the amount of the land tax reduction OR if the property is unable to be leased, the landowner requires land tax relief to meet financial obligations (such as debt repayments); AND
 - (d) The landowner has signed up to the code of conduct, even if the relevant lease is not regulated; AND
 - (e) In relation to single properties that have multiple tenants (for example, mixed use developments or shopping centres) it is noted that some tenants will be impacted and others will not. For administrative simplicity, if the criteria are met then the whole property is eligible, with the relief to be used to assist affected tenants.

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Detail of Proposal

Commercial tenancy relief

- 1.1 On 29 March 2020 National Cabinet endorsed a set of principles for commercial leases and on 3 April 2020 National Cabinet refined those principles (outlined at Recommendation 2) and agreed that they were to be incorporated into a mandatory [industry] code of conduct.
- 1.2 s47C, s47E(d)
[REDACTED]
- 1.3 [Industry has developed such a code (at Attachment X)] and it will be legislated by State and Territory Governments. The code of conduct will apply for tenancies where there is financial distress as a result of COVID-19 (for example, where the tenant is eligible for the Commonwealth Government's JobKeeper assistance) and is a small- or medium-sized enterprise (less than \$50 million turnover).
- 1.4 [s47C, s47E(d)]
[REDACTED]
- 1.5 The aim of this legislated mandatory code is to have landlords and tenants engage in productive, good faith discussions to enable them both to get through this pandemic crisis period and onto the other side with both their businesses in a position to succeed into the future. Give and take will be required on both sides.
- 1.6 Landlords and tenants whose negotiations are covered by this agreement will be provided the protections set out in the principles in Recommendation 2. Tenants gain protections in relation to termination of leases, rent increases, penalties for reduced or stopped trading, and penalties on unpaid rent. Landlord gain protections from leases being terminated by tenants - mass termination of leases, which extend for many years, would be enormously economically disruptive and value destructive and inconsistent with the temporary nature of the principles and the objective of a swift economic recovery.
- 1.7 This arrangement will provide greater certainty to landlords and tenants at this challenging time but will also allow for mutually agreed outcomes to be negotiated and agreed at the tenancy level. This is important given the significant number of leases that exist, and the need to maintain the lessor – lessee relationship.
- 1.8 Agreeing to this arrangement will allow States and Territories to harmonise required legislative amendments for retail leases (which are currently regulated) and applied to other leases through voluntary application of the [industry] code of conduct.

Land tax relief

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- 1.9 National Cabinet should note the agreed position of States and Territories to provide the equivalent of at least a three-month land tax waiver and three-month land tax deferral on application for eligible landowners.
 - 1.10 This proposal represents a significant financial contribution from States and Territories towards relieving tenants affected by COVID-19 in the form of forgone and deferred revenue.
 - 1.11 Once implemented, it will provide targeted relief to tenants affected by COVID-19, regardless of whether the land use is for commercial or residential purposes.
-

2 Risks and sensitivities

Form of implementation

- 2.1 While this submission provides for nationally consistent commercial leasing principles, detailed implementation will vary by jurisdiction. This is due to different land tax regimes existing across jurisdictions, which include variations in the scope of retail leases regulated.

Timing of implementation for legislative amendments

- 2.2 Due to the impact of COVID-19 on parliamentary sitting schedules, achieving a uniform date of implementation may prove challenging unless retrospective application is considered.
-

3 Impacts

- 3.1 Agreement to the recommendations of this submission will provide a significant benefit to the business and people of Australia that are, or soon will be, financially affected by the unprecedented impact of COVID-19.
- 3.2 The adoption of the revised commercial leasing principles will provide greater certainty to landlords and tenants at this challenging time. Implementation of the land tax relief measures will also provide much needed rent relief to affected tenants.

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Australian, State and Territory
Governments

National Cabinet for Australia's Coronavirus Response Submission

Title Commercial ~~leases and land tax~~ Tenancies Code of Conduct
Sponsoring ~~Treasurers~~ Prime Minister
Ministers Minister(s)

Summary

Proposed Action

That the National Cabinet **agree** to a mandatory ~~[industry] code~~ Commercial Tenancies Code of ~~conduct~~ Conduct between landlords and tenants in relation to commercial leasing tenancies, to be legislated by State and Territory Governments ~~for~~. The mandatory Tenancy Code of Conduct will apply to tenancies where ~~there the tenant~~ is in financial distress as a result of COVID-19 ~~(for example, the tenant is eligible for, and meets the Commonwealth Government's eligibility criteria for the Commonwealth's JobKeeper assistance) payment~~, and is a small- or medium- sized ~~enterprise (business with turnover less than \$50 million turnover), with the code of conduct incorporating~~.

That the National Cabinet **note** that the mandatory Commercial Tenancies Code of Conduct will be based on the commercial leasing principles agreed at the National Cabinet meeting on Friday 3 April s47C, s47E(d)

That National Cabinet **note** ~~temporary land tax relief measures to be implemented by each~~ **agree that** State and Territory Governments will provide landlords that sign up to help protect tenants experiencing financial distress ~~due the mandatory Commercial Tenancies Code of Conduct with the equivalent of at least a three month land tax relief on application from eligible landowners. Landlords must pass on the benefit of such relief to the COVID-19 pandemic tenants.~~

Key ~~reasons~~ Reasons

Agreement to the recommendations of this submission will enable States and Territories to legislate commercial tenancy relief measures and commit to a uniform approach to temporarily reducing the land tax burden for tenants affected by the COVID-19 pandemic. The mandatory ~~[industry] code~~ Commercial Tenancies Code of ~~conduct~~ Conduct will ensure sufficient security for tenants and landlords that are affected by these arrangements and

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proportional burden sharing in aiming to get through the ~~coronavirus~~COVID-19 crisis ~~and restarting afterwards~~.

Key risks and sensitivities

Implementation of the agreed ~~ed~~mandatory Commercial Tenancies Code of ~~conduct~~Conduct will require States and Territories to make legislative amendments, which may be challenging given Parliament sittings have been postponed in some jurisdictions and this could potentially result in different dates of commencement across Australia.

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Australian, State and Territory
Governments

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1 Proposed Actions

That the National Coronavirus Cabinet:

~~2.1.~~ **Note** that:

- (a) The Board of Treasurer's leasing principles for the protection of commercial tenants experiencing financial distress because of the COVID-19 pandemic presented to National Cabinet on Friday 3 April have been incorporated into ~~an~~ [\[industry\] code a mandatory Commercial Tenancies Code of conduct](#) and supplemented by a proportionality principle in relation to rent reductions.-
- (b) This ~~code~~[mandatory Commercial Tenancies Code of conduct](#) will be legislated by States and Territories for retail leases, which are the only regulated commercial leases.

~~(c)~~ s47C, s47E(d)

~~4.2.~~ **Note** that the principles covered by the ~~[industry] code conduct~~[mandatory Commercial Tenancies Code of Conduct](#) are as follows:-

- (a) Where it can, ~~rent~~ should continue to be paid, ~~and~~ where there is financial distress ~~as a result of COVID-19~~ (for example, the tenant is eligible for assistance through the JobKeeper program), tenants and landlords should negotiate a mutually agreed outcome.
- (b) There will be a proportionality to rent reductions based on the decline in turnover to ensure that the burden is shared between landlords and tenants.
- (c) There will be ~~a prohibition on~~ termination of leases for non-payment of rent (lockouts and eviction).
- (d) There will be a freeze on rent increases (except for turnover leases).
- (e) There will be a prohibition on penalties for tenants who stop trading or reduce opening hours.
- (f) There will be a prohibition on landlords passing land tax to tenants (if not already legislated).
- (g) There will be a prohibition on landlords charging interest on unpaid rent.
- (h) There will be ~~a prohibition on~~ landlords from making a claim to a bank guarantee or security deposit for non-payment of rent.
- (i) Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord could agree a rent waiver in return for a lease extension).

~~5.3.~~ **Agree** that:

- (a) for landlords and tenants that sign up to the ~~code~~[mandatory Commercial Tenancies Code of conduct](#), States and Territories agree to provide the equivalent of at least a three month land tax waiver and three month land tax

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deferral on application for eligible landowners, with jurisdictions to continue to monitor the situation.

- (b) landlords must pass on the benefits of such concession to the tenants.
- (c) where parties have signed up to the ~~code of conduct~~ [Commercial Tenancies Code of Conduct](#), the ability for tenants to terminate leases as mentioned in the National Cabinet Statement on 29 March 2020 will not apply.
- (d) mediation will be provided as needed through existing State and Territory mechanisms.

~~6.4.~~ **Note** that this will apply to all properties within a portfolio that meet the criteria, irrespective of valuation or land use (~~ie~~ [i.e.](#) commercial and residential).

~~7.5.~~ **Note** that the agreed eligibility criteria for land tax relief are as follows (noting there will be some jurisdictional variation in implementation):-

- (a) The landowner rents all or part of a property to a tenant/s OR all or part of a property is currently available for lease; AND—
- (b) At least one tenant's ability to pay their normal rent OR the landowner's ability to secure a tenant is affected by the pandemic; AND—
- (c) The landowner provides rent relief to affected tenant/s at least commensurate with the amount of the land tax reduction OR if the property is unable to be leased, the landowner requires land tax relief to meet financial obligations (such as debt repayments); AND—
- (d) The landowner has signed up to the code of conduct, even if the relevant lease is not regulated; AND—
- (e) In relation to single properties that have multiple tenants (for example, mixed use developments or shopping centres) it is noted that some tenants will be impacted and others will not. For administrative simplicity, if the criteria are met then the whole property is eligible, with the relief to be used to assist affected tenants.—

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Detail of Proposal

Commercial ~~tenancy relief~~ Tenancy Relief

On 29 March 2020 National Cabinet endorsed a set of principles for commercial leases and on 3 April 2020 National Cabinet refined ~~those~~ these principles (outlined at Recommendation 2) and agreed that they were to be incorporated into a mandatory ~~[industry]~~ code of conduct.

s47C, s47E(d)

~~3.3 [Industry has developed such a code (at Attachment X)] and it will be legislated by State and Territory Governments. The code of conduct will apply for tenancies where there is financial distress as a result of COVID-19 (for example, where the tenant is eligible for the Commonwealth Government's JobKeeper assistance) and is a small or medium-sized enterprise (less than \$50 million turnover).~~

~~3.4~~ s47C, s47E(d)

The aim of this legislated mandatory ~~code~~ Commercial Tenancies Code of Conduct is to have landlords and tenants engage in productive, good faith discussions to enable them both to get through ~~this pandemic~~ the COVID-19 crisis period and onto the other side with both their businesses in a position to succeed into the future. Give and take will be required on both sides.

Landlords and tenants whose negotiations are covered by this agreement will be provided the protections set out in the principles in Recommendation 2. Tenants gain protections in relation to termination of leases, rent increases, penalties for reduced or stopped trading, and penalties on unpaid rent. Landlord gain protections from leases being terminated by tenants – ~~mass~~ termination of leases, which extend for many years, would ~~be~~ enormously economically disruptive and value destructive and inconsistent with the temporary nature of the principles and the objective of a swift economic recovery.

~~3.71.1~~ This arrangement will provide greater certainty to landlords and tenants at this challenging time but will also allow for mutually agreed outcomes to be negotiated and agreed at the tenancy level. This is important given the significant number of leases that exist, and the need to maintain the lessor – lessee relationship.

~~3.81.2~~ Agreeing to this arrangement will allow States and Territories to harmonise required legislative amendments for retail leases (which are currently regulated) and applied to other leases through voluntary application of the [industry] code of conduct.

Land ~~tax relief~~ Tax Relief

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~~3.91.3~~ National Cabinet should note the agreed position of States and Territories to provide the equivalent of at least a three-month land tax waiver and three-month land tax deferral on application for eligible landowners.

~~3.401.4~~ This proposal represents a significant financial contribution from States and Territories towards relieving tenants affected by COVID-19 in the form of forgone and deferred revenue.

~~3.441.5~~ Once implemented, it will provide targeted relief to tenants affected by COVID-19, regardless of whether the land use is for commercial or residential purposes.

42 Risks and sensitivities

Form of ~~implementation~~Implementation

~~4.12.1~~ While this submission provides for nationally consistent commercial leasing principles, detailed implementation will vary by jurisdiction. This is due to different land tax regimes existing across jurisdictions, which include variations in the scope of retail leases regulated.

Timing of ~~implementation for legislative amendments~~Implementation for Legislative Amendments

~~4.22.2~~ Due to the impact of COVID-19 on parliamentary sitting schedules, achieving a uniform date of implementation may prove challenging unless retrospective application is considered.

Enforcement

~~2.3~~ States and territories will need to consider whether additional enforcement resources are required to ensure that parties are complying with the Code.

53 Impacts

~~5.13.1~~ Agreement to the recommendations of this submission will provide a significant benefit ~~to the business and people of Australia~~tenants that are, or soon will be, financially affected by the ~~unprecedented~~ impact of COVID-19.

~~5.2~~ The adoption of the revised commercial leasing principles will provide greater certainty to landlords and tenants at this challenging time. Implementation of the land tax relief measures will also provide much needed rent relief to affected tenants.

~~3.2~~

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National Cabinet for Australia's Coronavirus Response Submission

Title	Commercial Tenancies Code of Conduct
Sponsoring Minister(s)	Prime Minister

Summary

Proposed Action

That the National Cabinet **agree** to a mandatory Commercial Tenancies Code of Conduct between landlords and tenants in relation to commercial tenancies, to be legislated by State and Territory Governments. The mandatory Tenancy Code of Conduct will apply to tenancies where the tenant is in financial distress as a result of COVID-19, and meets the eligibility criteria for the Commonwealth's JobKeeper payment, and is a small or medium sized business with turnover less than \$50 million.

That the National Cabinet **note** that the mandatory Commercial Tenancies Code of Conduct will be based on the commercial leasing principles agreed at the National Cabinet on Friday 3 April (s47C, s47E(d))

That National Cabinet **agree** that State and Territory Governments will provide landlords that sign up to the mandatory Commercial Tenancies Code of Conduct with the equivalent of at least a three month land tax relief on application from eligible landowners. Landlords must pass on the benefit of such relief to tenants.

Key Reasons

Agreement to the recommendations of this submission will enable States and Territories to legislate commercial tenancy relief measures and commit to a uniform approach to temporarily reducing the land tax burden for tenants affected by the COVID-19 pandemic. The mandatory Commercial Tenancies Code of Conduct will ensure sufficient security for tenants and landlords that are affected by these arrangements and proportional burden sharing in aiming to get through the COVID-19 crisis.

Key risks and sensitivities

Implementation of the agreed mandatory Commercial Tenancies Code of Conduct will require States and Territories to make legislative amendments, which may be challenging given Parliament sittings have been postponed in some jurisdictions and this could potentially result in different dates of commencement across Australia.

1 Proposed Actions

That the National Coronavirus Cabinet:

1. **Note** that:
 - (a) The Board of Treasurer's leasing principles for the protection of commercial tenants experiencing financial distress because of the COVID-19 pandemic presented to National Cabinet on Friday 3 April have been incorporated into a mandatory Commercial Tenancies Code of Conduct and supplemented by a proportionality principle in relation to rent reductions.
 - (b) This mandatory Commercial Tenancies Code of Conduct will be legislated by States and Territories for retail leases, which are the only regulated commercial leases.
2. **Note** that the principles covered by the mandatory Commercial Tenancies Code of Conduct are as follows:
 - (a) Where it can, rent should continue to be paid, and where there is financial distress as a result of COVID-19 (for example, the tenant is eligible for assistance through the JobKeeper program), tenants and landlords should negotiate a mutually agreed outcome.
 - (b) There will be a proportionality to rent reductions based on the decline in turnover to ensure that the burden is shared between landlords and tenants.
 - (c) There will be a prohibition on termination of leases for non-payment of rent (lockouts and eviction).
 - (d) There will be a freeze on rent increases (except for turnover leases).
 - (e) There will be a prohibition on penalties for tenants who stop trading or reduce opening hours.
 - (f) There will be a prohibition on landlords passing land tax to tenants (if not already legislated).
 - (g) There will be a prohibition on landlords charging interest on unpaid rent.
 - (h) There will be a prohibition on landlords from making a claim to a bank guarantee or security deposit for non-payment of rent.
 - (i) Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord could agree a rent waiver in return for a lease extension).
3. **Agree** that:
 - (a) for landlords and tenants that sign up to the mandatory Commercial Tenancies Code of Conduct, States and Territories agree to provide the equivalent of at least a three month land tax waiver and three month land tax deferral on application for eligible landowners, with jurisdictions to continue to monitor the situation.
 - (b) landlords must pass on the benefits of such concession to the tenants.
 - (c) where parties have signed up to the Commercial Tenancies Code of Conduct, the ability for tenants to terminate leases as mentioned in the National Cabinet Statement on 29 March 2020 will not apply.

- (d) mediation will be provided as needed through existing State and Territory mechanisms.
- 4. **Note** that this will apply to all properties within a portfolio that meet the criteria, irrespective of valuation or land use (i.e. commercial and residential).
- 5. **Note** that the agreed eligibility criteria for land tax relief are as follows (noting there will be some jurisdictional variation in implementation):
 - (a) The landowner rents all or part of a property to a tenant/s OR all or part of a property is currently available for lease; AND
 - (b) At least one tenant's ability to pay their normal rent OR the landowner's ability to secure a tenant is affected by the pandemic; AND
 - (c) The landowner provides rent relief to affected tenant/s at least commensurate with the amount of the land tax reduction OR if the property is unable to be leased, the landowner requires land tax relief to meet financial obligations (such as debt repayments); AND
 - (d) The landowner has signed up to the code of conduct, even if the relevant lease is not regulated; AND
 - (e) In relation to single properties that have multiple tenants (for example, mixed use developments or shopping centres) it is noted that some tenants will be impacted and others will not. For administrative simplicity, if the criteria are met then the whole property is eligible, with the relief to be used to assist affected tenants.

Detail of Proposal

Commercial Tenancy Relief

On 29 March 2020 National Cabinet endorsed a set of principles for commercial leases and on 3 April 2020 National Cabinet refined those principles (outlined at Recommendation 2) and agreed that they were to be incorporated into a mandatory code of conduct.

s47C, s47E(d)

The aim of this legislated mandatory Commercial Tenancies Code of Conduct is to have landlords and tenants engage in productive, good faith discussions to enable them both to get through the COVID-19 crisis and onto the other side with both their businesses in a position to succeed into the future. Give and take will be required on both sides.

Landlords and tenants whose negotiations are covered by this agreement will be provided the protections set out in the principles in Recommendation 2. Tenants gain protections in relation to termination of leases, rent increases, penalties for reduced or stopped trading, and penalties on unpaid rent. Landlord gain protections from leases being terminated by tenants – mass termination of leases, which extend for many years, would be enormously economically disruptive and value destructive and inconsistent with the temporary nature of the principles and the objective of a swift economic recovery.

- 1.1 This arrangement will provide greater certainty to landlords and tenants at this challenging time but will also allow for mutually agreed outcomes to be negotiated and agreed at the tenancy level. This is important given the significant number of leases that exist, and the need to maintain the lessor – lessee relationship.
- 1.2 Agreeing to this arrangement will allow States and Territories to harmonise required legislative amendments for retail leases (which are currently regulated) and applied to other leases through voluntary application of the [industry] code of conduct.

Land Tax Relief

- 1.3 National Cabinet should note the agreed position of States and Territories to provide the equivalent of at least a three-month land tax waiver and three-month land tax deferral on application for eligible landowners.
 - 1.4 This proposal represents a significant financial contribution from States and Territories towards relieving tenants affected by COVID-19 in the form of forgone and deferred revenue.
 - 1.5 Once implemented, it will provide targeted relief to tenants affected by COVID-19, regardless of whether the land use is for commercial or residential purposes.
-

2 Risks and sensitivities

Form of Implementation

- 2.1 While this submission provides for nationally consistent commercial leasing principles, detailed implementation will vary by jurisdiction. This is due to different land tax regimes existing across jurisdictions, which include variations in the scope of retail leases regulated.

Timing of Implementation for Legislative Amendments

- 2.2 Due to the impact of COVID-19 on parliamentary sitting schedules, achieving a uniform date of implementation may prove challenging unless retrospective application is considered.

Enforcement

- 2.3 States and territories will need to consider whether additional enforcement resources are required to ensure that parties are complying with the Code.
-

3 Impacts

- 3.1 Agreement to the recommendations of this submission will provide a significant benefit tenants that are, or soon will be, financially affected by the impact of COVID-19.
- 3.2 The adoption of the revised commercial leasing principles will provide greater certainty to landlords and tenants at this challenging time. Implementation of the land tax relief measures will also provide much needed rent relief to affected tenants.

Prime Minister's National Cabinet Brief

Title National Support for Commercial and Retail Tenants Affected by COVID-19

Meeting 24 March 2020

Summary

New South Wales and Western Australia are proposing urgent relief to small businesses and not-for-profits s47B, s47E(d)

What do we want to achieve?

- State and territories to agree to a consistent approach to the treatment of commercial leases on government premises where possible, and communicate this clearly in a coordinated way.

s47B, s47E(d)

Key Points and Recommended Action

You should thank New South Wales and Western Australia for their proposal s47B, s47E(d)

- The current situation with the COVID-19 Coronavirus raises important questions for tenants of commercial leases on government premises. Tenants experiencing financial difficulties or distress as a result of the current situation should be provided relief if state and territory governments are in a position to do so. This will complement the Commonwealth's existing support for small businesses and not-for-profits.
- The proposal will provide relief by providing a moratorium on the termination of leases if tenants do not pay rent and a freeze on all rent increases. Other options are also being considered such as deferral of fees, levies and taxes, allowing tenants to terminate leases, and no penalties for those who stop trading.
- It is critical that states and territories aim for a consistent national approach to the treatment of commercial leases on government premises if possible. This will reduce confusion for small businesses and not-for-profits, and will reduce the need for stakeholders to lobby government. It is also important that state and territory governments communicate their decisions clearly.

You should ask states and territories if they are also considering options for how they can ease pressure on businesses in relation to private commercial leases.

- Commercial leases are governed by state and territory law. Businesses who are experiencing issues with their commercial leasing arrangements as a result of the COVID-19 are like to begin to feel pressure and financial distress in relation to their leases as the crisis continues.

s47B, s47E(d)

- States and territories should consider if there is any additional assistance that they can provide to businesses and landlords, such as increased advisory and mediation services.
 - States and territories should continue to monitor the situation and the effectiveness of any additional support. If this support is ineffective and is not working to support distressed retailers and landlords to reach agreements, additional options should be considered.

Contact Officer:

s22(1)(a)(ii)

Economic Policy Branch, Economic Division

SES Officer:

Shane Johnson

Economic Policy Branch, Economic Division

Consultation: Commonwealth State Relations Section, Small Business and Employment Section, Industry Section, Legal Policy Section

Prime Minister's National Cabinet Brief

Title Alleviation of Financial Stress for Commercial Tenants

Meeting 25 March 2020

Summary

New South Wales and Western Australia are proposing urgent relief to small businesses and not-for-profits s47B, s47E(d)

What do we want to achieve?

- State and territories to agree to a consistent approach to the treatment of commercial leases on government premises where possible, and communicate this clearly in a coordinated way.

s47B, s47E(d)

Key Points and Recommended Action

Thank New South Wales and Western Australia for their proposal s47B, s47E(d)

- The current situation with the COVID-19 Coronavirus raises important questions for tenants of commercial leases on *government premises*. Tenants experiencing financial difficulties or distress as a result of the current situation should be provided relief if state and territory governments are in a position to do so.
 - This will complement the Commonwealth's existing support for small businesses and not-for-profits.
- The proposal will provide relief by deferring or waiving rent payments by small business and not-for-profits.
 - Other options are also being considered such as deferral of fees, levies and taxes, allowing tenants to terminate leases, no penalties for those who stop trading, and termination without loss.

Emphasise the importance of states and territories moving together in a consistent and coordinated fashion.

- It is critical that states and territories aim for a consistent national approach to the treatment of commercial leases on government premises if possible.
 - States and territories should work together to provide similar support to avoid confusion and future stakeholder lobbying.
- It is also important that state and territory governments communicate their decisions clearly.

Note that the Treasurer is preparing a set of options for states and territories to consider to provide relief to small businesses and not-for-profits in commercial tenancies. This will be brought forward later this week.

Ask states and territories to start considering options for how they can ease pressure on businesses in relation to commercial leases on private premises.

- Commercial leases are governed by state and territory law. Businesses who are experiencing issues with their commercial leasing arrangements as a result of the COVID-19 are like to begin to feel pressure and financial distress in relation to their leases as the crisis continues.

s47B, s47E(d)

- States and territories should consider if there is any additional assistance that they can provide to businesses and landlords, such as increased advisory and mediation services.
 - States and territories should continue to monitor the situation and the effectiveness of any additional support. If this support is ineffective and is not working to support distressed retailers and landlords to reach agreements, additional options should be considered.

Contact Officer: s22(1)(a)(ii) Economic Policy Branch, Economic Division	SES Officer: Shane Johnson, s22(1)(a)(ii) Economic Policy Branch, Economic Division
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Consultation: Commonwealth State Relations Section, Small Business and Employment Section, Industry Section, Legal Policy Section

Prime Minister's National Cabinet Brief

Title Commercial Tenancies

Meeting National Cabinet, 2 April 2020

Summary

s47B, s47E(d)

to a set of principles in relation to commercial leases and land tax arrangements to provide protection and relief to commercial tenants throughout the COVID-19 crisis.

In the first instance, tenants are encouraged to try and negotiate a mutually agreed outcome with landlords if they are in financial distress. States and territories will also make legislative amendments that prohibit evictions, freeze rent increases and prohibit landlords from penalising tenants in various forms. In addition, governments will support the development of a voluntary code of conduct being developed between peak bodies representing landlords, tenants and financial institutions.

States and territories will also provide waivers of land tax upon application by the landlord.

s47B, s47E(d)

What do we want to achieve?

s47C, s47E(d)

Key Points and Recommended Action

Ask states and territories to provide an update on the development of targeted support in the commercial rental market, including any announcements that have been made.

- It is important that states and territories move together where possible, to ensure interventions are consistent across Australia, and avoid confusing those affected.

s47B, s47E(d)

Note that the Australian Banking Association have announced assistance to help commercial landlords who help tenants through the COVID-19 crisis.

- Businesses with total business loan facilities of up to \$10 million (up from the \$3 million small business threshold) will now be able to defer repayments for loans attached to their business for six months.
- The type of businesses this applies to includes commercial landlords of properties such as local shopping centres, pubs, clubs and restaurants, who must agree not to terminate leases or evict current tenants for rent arrears due to COVID19 in order to access support.
- This support will help protect thousands more small businesses from being evicted if they are struggling to pay the rent as it covers approximately 90 per cent of commercial property owners who have loans with an Australian bank.

s47C, s47E(d)

Note the states and territories work on residential tenancy interventions.

Risks and Sensitivities

s47C, s47E(d)

Background

National Cabinet agreed that states and territories will develop and implement targeted interventions in commercial rental markets according to the set of principles agreed below.

- (a) designing a mechanism (or definition) to determine rental distress;
- (b) tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
- (c) the reduction or waiver of rental payment for a defined period for impacted tenants;
- (d) the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
- (e) commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
- (f) landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
- (g) cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.

Any interventions will also be aimed at the wider principles of hibernation and sharing the cost burden between landlords, tenants and banks. States and territories were also tasked

with developing standard documentation to facilitate a common approach between landlords, tenants and banks.

Contact Officer:
Commercial Tenancies
s22(1)(a)(ii), s22(1)(a)(ii)
Economic Policy Branch, Economic Division

SES Officer:
Commercial Tenancies
Shane Johnson, s22(1)(a)(ii)
Economic Policy Branch, Economic Division

Prime Minister's National Cabinet Brief

Title Commercial and Residential Tenancies

Meeting 29 March 2020

Summary

Jurisdictions will be providing a paper for National Cabinet, however the paper will only be available just before the meeting commences.

We understand state and territory treasurers have agreed that short term intervention is required in commercial and residential tenancies to avoid permanent dislocation in the property market due to the impacts of COVID-19. The proposed intervention will support tenants through preventing evictions and enabling reduced rent payments, essentially sharing the burden between landlords, tenants and government.

States and territories have agreed to a temporary moratorium on rent increases and evictions for non-payment to be applied across all tenancies immediately. States and territories propose to then establish a state-based entity in each jurisdiction to verify rental distress and provide financial support through a scheduled reduction in rental payments. They also propose working with financial institutions to provide support to landlords.

What do we want to achieve?

- States and territories to agree a consistent approach to the provision of commercial and residential rent relief, and to communicate this clearly to Australians.

s47B, s47E(d)

Other jurisdictions' objectives and sensitivities

- States and territories are seeking National Cabinet's endorsement of their suggested approach. They will establish a working group to implement and administer the new arrangement.

s47B, s47E(d)

Key Points and Recommended Action

Thank the states and territories for working collaboratively to develop options to provide relief to businesses and residential tenancies, and **welcome** discussion of their proposed approach.

Moratorium on Evictions

s47B, s47E(d)

- A moratorium on commercial and residential evictions for non-payment will give tenants financial breathing room, and provide states and territory governments' time to establish rental distress (cost-sharing) financial support schemes.
- There will need to be clear communication that this is not a signal to not pay rent. People who can pay rent are required to do so.

s47B, s47E(d)

- The Commonwealth Government has already provided strong cash flow support to businesses in its economic stimulus packages. This support should ease the pressure on small businesses, including in maintaining their commercial lease obligations
- In the first instance, businesses experiencing financial difficulties or distress should make use of this support, or negotiate with their landlords to obtain rental abatements, surrender of the lease or other relief (depending on their preferences). Landlords can also look to the banks for financial support.
- The Commonwealth Government has also already announced significant measures to increase the amount of income support people impacted by COVID-19 receive, and is considering what further support is needed.
- The Commonwealth's primary (and preferred) mechanism to support people in rental stress is through the income support system, including through Commonwealth Rent Assistance. Any further Commonwealth support will be considered in that context.

s47B, s47E(d)

Agree the Commonwealth can consider what information it can provide to jurisdictions to support this Scheme, noting there are legislative barriers to the information it can provide.

Contact Officer:
Commercial Tenancies
s22(1)(a)(ii)
Economic Policy Branch, Economic Division

Residential Tenancies

SES Officer:
Commercial Tenancies
Shane Johnson, s22(1)(a)(ii)
Economic Policy Branch, Economic Division

Residential Tenancies

<div>s22(1)(a)(ii)</div> <div>Social Services Branch, Social Policy Division</div>	<div>Tristan Reed, s22(1)(a)(ii)</div> <div>Social Services Branch, Social Policy Division</div>
--	--

Prime Minister's National Cabinet Brief

Title Commercial Tenancies

Meeting 30 March 2020

Summary

States and territories will provide an oral update on arrangements for commercial tenancies.

What do we want to achieve?

- States and territories to agree on a consistent approach to providing targeted support to commercial tenancies and to develop clear guidance for landlords and tenants.

s47B, s47E(d)

Key Points and Recommended Action

Ask states and territories to provide an update on the development of targeted support in the commercial rental market.

- It is important that states and territories move together where possible, to ensure interventions are consistent across Australia, and avoid confusing those affected.

Ask states and territories to provide an update on progress in developing standard documentation to facilitate negotiations between landlords, tenants and financial institutions.

Emphasise the importance of states and territories moving together in a consistent and coordinated fashion.

Note that the Australian Banking Association have announced assistance to help commercial landlords who help tenants through the COVID-19 crisis.

- Businesses with total business loan facilities of up to \$10 million (up from the \$3 million small business threshold) will now be able to defer repayments for loans attached to their business for six months.
- The type of businesses this applies to includes commercial landlords of properties such as local shopping centres, pubs, clubs and restaurants, who must agree not to terminate leases or evict current tenants for rent arrears due to COVID19 in order to access support.
- This support will help protect thousands more small businesses from being evicted if they are struggling to pay the rent as it covers approximately 90 per cent of commercial property owners who have loans with an Australian bank.

Note that banks are not the only sources of capital to businesses, and that tenants and landlords may continue to face difficulties if covenants for non-payment of rents in commercial tenancy agreements are triggered.

Note that the Commonwealth will continue to work with banks and other financial institutions on these issues.

s47C, s47E(d)

Background

Last night National Cabinet agreed that states and territories will develop and implement targeted interventions in commercial rental markets according to the set of principles agreed below, and that states and territories will provide updates on progress.

Principles to Underpin Interventions on Commercial Tenancies

- (a) designing a mechanism (or definition) to determine rental distress;
- (b) tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
- (c) the reduction or waiver of rental payment for a defined period for impacted tenants;
- (d) the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
- (e) commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
- (f) landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
- (g) cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.

Any interventions will also be aimed at the wider principles of hibernation and sharing the cost burden between landlords, tenants and banks.

States and territories were also tasked with developing standard documentation to facilitate a common approach between landlords, tenants and banks.

Contact Officer: Commercial Tenancies s22(1)(a)(ii) Economic Policy Branch, Economic Division	SES Officer: Commercial Tenancies Shane Johnson, s22(1)(a)(ii) Economic Policy Branch, Economic Division
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From: [Patterson, Cath](#)
To: [Goldsworthy, Brenton](#)
Cc: [Duggan, Simon](#); [Reed, Tristan](#); s22(1)(a)(ii)
Subject: RE: Urgent advice needed on two papers for Nat Cab tomorrow - commercial and residential tenancies [SEC=OFFICIAL]
Date: Saturday, 28 March 2020 3:13:01 PM
Attachments: [National Cabinet Minute 27 March - AJS.docx](#)

OFFICIAL

Thanks Brenton

There is a formal minute has just been sent out to the States and Territories by Cab Div (attached is the minute that went to them via ASNET). Extract of text is below

Agreed:

- (a) assistance provided to commercial tenants should be guided by the underlying principle of 'business hibernation'
- (b) Treasurers be tasked with finalising agreed proposals on commercial and residential tenancies for National Cabinet consideration at its next meeting.

States via DSOMs were tasked s47C yesterday afternoon on the request for Treasurers to bring back a single product for both tenancy issues

See extract from s47C

Commercial and residential tenancies

Commonwealth and State and Territory Treasurers have been tasked to sort out agreed proposals for both these issues and bring them back to National Cabinet on Sunday.

And also s47C

Commercial and residential tenancies - Treasurers have been tasked to sort out agreed proposals for both these issues and bring them back to National Cabinet -on Sunday.

From: Goldsworthy, Brenton

Sent: Saturday, 28 March 2020 3:00 PM


To: Patterson, Cath

Cc: Duggan, Simon ; Reed, Tristan ; Schofield, Shelby

Subject: Re: Urgent advice needed on two papers for Nat Cab tomorrow - commercial and residential tenancies [SEC=OFFICIAL]

Hi Cath

s47B, s47C



Brenton

Sent from my iPad

On 28 Mar 2020, at 2:02 pm, Patterson, Cath <Cath.Patterson@pmc.gov.au> wrote:

Nat Cab specifically wanted a joint approach and not individual papers from Commonwealth and the States. It was why they asked that all Treasurers to work to bring a single proposal back to Nat Cab. s47B, s47C

Simon/Brenton - can you help out here to make this happen using your senior contacts.

Thanks

Cath

On 28 Mar 2020, at 1:49 pm, Reed, Tristan <Tristan.Reed@pmc.gov.au> wrote:

Sorry!

I've spoken to Carla (social policy) again. s47B, s47C

Sent from my iPhone

On 28 Mar 2020, at 1:31 pm, Pullen, Victoria <Victoria.Pullen@pmc.gov.au> wrote:

Oh! I was talking s22(1)(a)(ii), SK's EO.
As opposed to Carla who does housing in Social Policy.
I'll try s22(1)(a)(ii)
Vicky
Victoria Pullen
s22(1)(a)(ii)

On 28 Mar 2020, at 1:28 pm, Reed, Tristan <Tristan.Reed@pmc.gov.au> wrote:

I've spoken to Carla today. She is working on a commonwealth paper for residential s47B, s47C

Sent from my iPhone

On 28 Mar 2020, at 1:26 pm,
Pullen, Victoria
<Victoria.Pullen@pmc.gov.au>
wrote:

Hi, let me know if you would
like me to give Karla a call. I
see she's online.

Victoria Pullen
s22(1)(a)(ii)

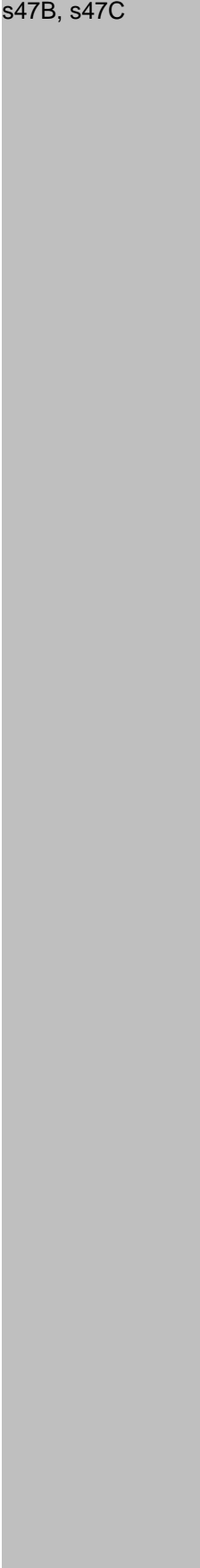
On 28 Mar 2020,
at 1:24 pm,
Patterson, Cath
<Cath.Patterson@pmc.gov.au>
wrote:

Thanks Brenton.
Good to know
the commercial
one is under
control. I will try
my state
contacts to
confirm on resi
one.
Cath

On
28
Mar
2020,
at
1:19
pm,
Goldsworthy,
Brenton
<Brenton.Goldsworthy@pmc.gov.au>
wrote:

A

s47B, s47C



Brenton

Sent
from
my
iPad

On
28
Mar
2020,
at
1:13
pm,
Goldsworthy,
Brenton
<Brenton.Goldsworthy@pmc.gov.au>
wrote:

I
spoke
to
Matt
Brine
at
Treasury.
Commonwealth
is
leading
the
commercial
paper
(Hector
Thompson's
team
with

s22(1)(a)(ii)

leading).
They
are
clarifying
the
residential
lead
now.
Will
let
you
know
as
soon

as
I
know.
Brenton

Sent
from
my
iPad

On
28
Mar
2020,
at
12:52
pm,

s22(1)(a)
(ii)

wrote:

OFFICIAL

I've
reached
out
to
Treasury's
Fiscal
area
twice
but
have
had
no
reply.
Cab
Div
are
also
trying
to
find
out

who
is
drafting.

s22(1)(a)(ii)

|
Microeconomics
|
Economic
Division
|
Department
of
Prime
Minister
and
Cabinet



s22(1)(a)(ii)



s22(1)(a)(ii) @pmc.gov.au

From:

Patterson,
Cath
<Cath.Patterson@pmc.gov.au>

Sent:

Saturday,
28
March
2020
12:51
PM

To:

Duggan,
Simon
<Simon.Duggan@pmc.gov.au>;
Goldsworthy,
Brenton
<Brenton.Goldsworthy@pmc.gov.au>;

Johnson,
Shane
<Shane.Johnson@pmc.gov.au>;

s22(1)(a)(ii)

<s22(1)(a)(ii)@pmc.gov.au>

Subject:

Urgent
advice
needed

on
two
papers
for
Nat
Cab
tomorrow

-

commercial
and
residential
tenancies
[SEC=OFFICIAL]

OFFICIAL

Hi
Nat
Cab
yesterday
tasked
Treasurers
to
agree
positions
on
measures
to
deal
with
both
commercial
and
residential
tenancies
(NSW/WA
had
done
a
paper

on
commercial
and
VIC/SA
had
done
one
on
residential
—
but
Nat
Cab
wanted
Comm/State
options
to
be
worked
up
through
by
Treasurers).
Cab
Sec
and
I
are
just
trying
to
land
the
agenda
for
tomorrow's
meeting
and
are
trying
to
establish
who
is
holding
the
pen
for

the
two
papers
coming
from
the
discussions
between
Treasurers.
Simon/Brenton

—
would
you
be
able
to
use
your
contacts
in
Treasury
to
find
out
who
is
drafting
the
two
papers
(it
may
be
one
of
the
States
but
we
just
don't
know
which
one).

s22(1)(a)(ii) Shane

—
if
you

already

know

this

—

please

let

us

all

know.

Thanks

Cath



Australian Government

SM20/0266/NATCAB/3

27 March 2020

THIS DOCUMENT HAS A LIMITED DISTRIBUTION

CABINET MINUTE

NATIONAL CABINET

The National Cabinet for Australia's Coronavirus Response ('the National Cabinet'):

1. Noted the oral update by the Prime Minister on the G20 Leaders' discussions overnight and the development of a third Commonwealth Government economic package.
2. Noted the oral presentation by the Secretary of the Commonwealth Treasury Department on the potential economic and workforce implications arising from different levels of social distancing restrictions and business closures.
3. Agreed that Treasurers, through the Heads of Treasuries process, share and refine work on the economic impacts of COVID-19 responses, including additional analysis of the interactions between health and economic assumptions and modelling.
4. Agreed:
 - (a) assistance provided to commercial tenants should be guided by the underlying principle of 'business hibernation'
 - (b) Treasurers be tasked with finalising agreed proposals on commercial and residential tenancies for National Cabinet consideration at its next meeting.

5. Noted the Coronavirus health update by the Chief Medical Officer (CMO) and his advice that returning international travellers remain the most significant vector for the spread of Coronavirus in Australia.

6. Agreed that:

- (a) as soon as possible, but no later than 11:59pm AEDT Saturday 28 March 2020, all travellers arriving in Australia will be required to undertake mandatory 14 day self-isolation at designated facilities (for example, a hotel) in the city in which they entered Australia, notwithstanding their state of residence
- (b) travellers will be transported directly to designated facilities after appropriate immigration, customs and enhanced health checks
- (c) designated facilities will be determined by the relevant State or Territory government; while ordinarily they will be in the city of entry where the traveller has cleared immigration, facilities in other areas may be used in extenuating circumstances
- (d) these requirements will be implemented under State and Territory legislation and will be enforced by State and Territory governments, with the support of the Australian Border Force (ABF) and the Australian Defence Force (ADF) where necessary and according to need across Australia
- (e) States and Territories would meet the costs (other than for ABF and ADF support) and determine any contributions required from travellers arriving within their jurisdictions.

7. Agreed that the ADF will begin assisting State and Territory governments to undertake quarantine compliance checks of those who are required to be in mandatory isolation after returning from overseas, with enforcement remaining the responsibility of States and Territories.

8. Agreed that the Commonwealth would ensure ABF declaration card information on returning international travellers who reside in jurisdictions other than their city of arrival is provided to the appropriate jurisdiction.

9. Noted:

- (a) the advice provided by all jurisdictions on their current enforcement regimes and activities and agreed the importance of continued strong enforcement of existing social isolation and social distancing measures
- (b) the advice from the Commonwealth, New South Wales, Victorian and Queensland Chief Health Officers on next step measures.

10. Agreed:

- (a) Queensland, New South Wales and Victoria will develop options for further restrictions to support social distancing and reduce community transmission for consideration at the next meeting
- (b) Western Australia will convene a discussion with Tasmania, South Australia and the Northern Territory to consider options for further restrictions that might be appropriate for jurisdictions with different epidemiological and geographic circumstances
- (c) the importance of ensuring that any further restrictions on business be accompanied by further economic support measures.

11. Noted:

- (a) the further advice from the Australian Health Protection Principal Committee in relation to the supply of intensive care unit (ICU) beds nation-wide and surge capacity (including related equipment, consumables and workforce)
- (b) the CMO's advice that ICU surge capacity is likely to meet predicted need.

12. Agreed that a paper setting out principles and protocols for the allocation and sharing of critical medical supplies be provided to the National Cabinet for consideration at its next meeting.

13. Agreed the statement on schools.

14. Agreed that States and Territories urgently finalise arrangements with private hospitals under the COVID-19 National Partnership Agreement and report on outcomes at the National Cabinet meeting on 29 March 2020.

Cabinet Secretary

From: [Patterson, Cath](#)
To: jenny.wilkinson@treasury.gov.au; [Goldsworthy, Brenton](#); [Johnson, Shane](#); [s22\(1\)\(a\)\(ii\)](#) [Reed, Tristan](#); [Roper, Matthew](#)
Cc: [Pullen, Victoria](#); [s22\(1\)\(a\)](#) [s22\(1\)\(a\)\(ii\)](#)
Subject: Commercial and residential tenancies - outcomes from Nat Cab and next steps [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Monday, 30 March 2020 8:44:32 AM
Attachments: [30 March National Cabinet Agenda.pdf](#)

PROTECTED//CABINET

All

Thank you so much for all the weekend work on these issues.

Below are the decisions from National Cabinet last night.

On commercial – key thing for the Commonwealth is managing the discussions with the banks.

State and Territory treasurers have been asked to go and work up some standard documentation for negotiated agreements between landlords and tenants

On residential – Treasurers have been asked to keep working on this.

The Cabinet Secretary has put commercial tenancies on the agenda again for tonight's National Cabinet meeting – just as an oral update.

Nat Cab is likely to be at 6pm so PMC team – can you keep in touch with Treasury and PMO during the day and provide a very short update brief for the PM for tonight.

Regards

Cath

1. Agreed to a moratorium on evictions over the next six months for commercial and residential tenants in financial distress who are unable to meet their commitments due to the impact of the coronavirus.
2. Agreed to a common set of principles, endorsed by Treasurers, to underpin and govern intervention to aid commercial tenancies as follows:
 - (a) Designing a mechanism (or definition) to determine rental distress
 - (b) tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
 - (c) the reduction or waiver of rental payment for a defined period for impacted tenants;
 - (d) the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
 - (e) commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
 - (f) landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
 - (g) cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.
3. Also agreed that the final arrangements should be based on two underlying principles:
 - (a) Hibernation
 - (b) Shared pain, including for tenants, landlord and banks.
4. Agreed that State and Territory Treasurers come back as soon as possible, with standard documentation to facilitate a common approach to

negotiations between landlords, tenants and the banks, to minimise legal and other advice costs.

5. Agreed that States and Territories develop and implement appropriate, targeted interventions in the commercial rental markets according to these principles and that a report be provided to National Cabinet on implementation progress as soon as possible.
6. Agreed that the Commonwealth would lead negotiations with financial institutions.
7. Agreed that further work be undertaken by Treasurers on residential tenancies.



Australian Government

Document 28

NATIONAL CABINET

AGENDA VERSION 1

Monday 30 March 2020

6PM to 9PM

Canberra - Parliament House Briefing Room via Telepresence (ACT)

NO		RESPONSIBLE
1.	Strategic Update (Oral Update)	Prime Minister
2.	Economic Issues:	
	(a) Commercial Tenancies (Oral Update)	Prime Minister Premiers and Chief Ministers
3.	Health Issues:	
	(a) Coronavirus Update (Oral Update)	Dr Murphy
	(b) Further Restrictions to Support Social Distancing and Reduce Community Transmission (Oral Update)	Premiers and Chief Ministers Dr Murphy
4.	Other Business (Oral Update)	

**Final Short Form
Papers Due : 12PM 30 March 2020**

From: Goldsworthy, Brenton
Sent: Thursday, 2 April 2020 12:54 PM
To: Gaetjens, Phil; Duggan, Simon
Cc: Poels, Wayne; Patterson, Cath; s22(1)(a)(ii) Johnson, Shane; Ranjit, Jessica
Subject: Commercial tenancies [SEC=PROTECTED]

PROTECTED

Phil, Simon

I understand from Wayne that at s47C, s47E(d) in regards to commercial tenancies. s22(1) who is our expert on this and has been working closely with Treasury, has provided the following advice. As you can see, s47C, s47E(d).

s47C, s47E(d)

At present, we have no information on which route industry and the states and territories may pursue.

Brenton

Brenton Goldsworthy | First Assistant Secretary
Economic Division | Department of the Prime Minister and Cabinet
p. s22(1)(a)(ii)
e. Brenton.Goldsworthy@pmc.gov.au | w. www.pmc.gov.au
One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

From: Firth, Clare
Sent: Thursday, 26 March 2020 11:05 AM
To: Goldsworthy, Brenton; s22(1)(a)(ii) Johnson, Shane; Burton, Mark
Subject: FW: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi,

So far, I've only spoken to s47B I'm waiting for s47B to call me back.

s47B s22(1)(a)(ii) research that commercial tenancies do not typically have force majeure clauses.

In terms of what's superior in a legal context – an exec order that certain businesses cease trading or significantly limit trading vs a tenancy agreement requiring tenants to keep their businesses open for trading s47B

Brenton, I don't know that this is really in scope of Celeste's branch, but s22(1)(a)(ii) or I could test it with Celeste or s22(1)(a)(ii) – assuming they haven't already been consulted on the retail tenancy paper going to National Cabinet tomorrow?

Cheers
Clare

From: Goldsworthy, Brenton
Sent: Thursday, 26 March 2020 9:25 AM
To: Firth, Clare
Subject: FW: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Can you please drop by when you are in. Thanks. Brenton

From: s22(1)(a)(ii) <s22(1)(a)(ii)@pmc.gov.au>
Sent: Thursday, 26 March 2020 8:35 AM
To: Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>
Cc: Johnson, Shane <Shane.Johnson@pmc.gov.au>
Subject: RE: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks Brenton. These are really hard questions to answer, and difficult to given state and territory laws govern leases and those laws differ by jurisdiction.

A lot of the material put out by lawyers that I have been reading the last couple of days says that commercial tenancies do not typically have force majeure clauses (triggers to halt or cease leases when unforeseen or extraordinary circumstances happen) and force majeure is very difficult to prove in court. You have to prove it using the doctrine of frustration, and the tenant is required to prove that they were in

some way prevented from occupying the space. We may have a circumstance here where if the government does mandate closure, it *could* potentially be considered frustration, but all these tenants would have to go to court and I don't think that is an outcome that we want.

On the issue of trading covenants, the stuff I have read says that many retail leases do have clauses that require tenants to keep their businesses open for trading and that these have the potential to cause disputes, especially if a government mandate requires closure. The discussion indicates a view that a court would probably hold a government statute or direction higher than the trading covenant. But again, it would need to be taken before the court if there is a dispute.

While some SMEs may be telling the government that it would be easier for them to trigger clauses in a lease, we have no way of knowing if this would be the same for everyone due to the nature of leasing arrangements and difference in state and territory laws.

I think a better course of action may be to get our COAG Team to see if they can reach out to some jurisdictions to answer these questions. I don't think that AG's would have much expertise given this is state and territory law, but I am happy to be told different.

s22(1)

(a)(ii)

s22(1)(a)(ii) | Microeconomics | Economic Division | Department of Prime Minister and Cabinet

📞 s22(1)(a)(ii) ✉ s22(1)(a)(ii) @pmc.gov.au

From: Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>
Sent: Thursday, 26 March 2020 7:23 AM
To: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>
Cc: Johnson, Shane <Shane.Johnson@pmc.gov.au>
Subject: FW: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]
Importance: High

PROTECTED//CABINET

Hi s22(1) any advice on how we can quickly get an answer to the commercial tenancy question? Who to call? If you can give me a suggested name and contact I'm happy to reach out or if you're able to reach out to someone and find out the answer even better. s22(1)(a)(ii)

Thanks! Brenton

From: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)>
Sent: Wednesday, 25 March 2020 11:01 PM
To: Duggan, Simon <Simon.Duggan@pmc.gov.au>; Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>
Cc: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)>
Subject: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi,

I have heard of some feedback from medium-sized businesses reaching out to the Treasurer and his office suggesting that many retailers would much prefer to be shutdown by the government than what is currently happening based on the medical advice. They claim that if they were shut down they would more easily be able to

trigger covenants in their rental agreements to avoid having to pay rent for a store with no/little business, as well as claiming that it was easier then to stand down workers rather than the current situation.

Could I please get the Department to verify these points (not sure these are all your areas)? In that I don't mean with specific companies, but in general commercial tenancy agreements would the provisions in the case of government-mandated lockdowns assist more in retailers not having to meet those overheads?

s22(1)(a)(ii)

Happy to discuss in the morning, but would be good to get an initial read on these questions swiftly.


s22(1)(a)(ii)

Office of the Prime Minister, the Hon Scott Morrison MP
MG 8, Parliament House, Canberra ACT 2600

p. s22(1)(a)(ii)

e. s22(1)(a)(ii) [@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)

s22(1)(a)(ii)



From: Goldsworthy, Brenton

Sent: Thursday, 26 March 2020 11:22 AM

To: s22(1)(a)(ii) <[redacted]@pm.gov.au>; Duggan, Simon <Simon.Duggan@pmc.gov.au>

Cc: s22(1)(a)(ii) <[redacted]@pm.gov.au>; s22(1)(a)(ii) <[redacted]@pm.gov.au>

Subject: RE: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi All

Unfortunately these are difficult questions to provide definitive answers on.

State and territory laws govern leases and those laws differ by jurisdiction. The material put out by lawyers the last couple of days says that commercial tenancies do not typically have force majeure clauses (triggers to halt or cease leases when unforeseen or extraordinary circumstances happen), s47B

Even if there is a force majeure clause, this can be very difficult to provide in court. You need to prove it using the doctrine of frustration, and the tenant is required to prove that they were in some way prevented from occupying the space. I'm not a lawyer but it would seem a mandated closure could be considered frustration although tenants might still need to go to court. There are also trading covenants to consider – many retail leases have clauses that require tenants to keep their businesses open for trading. These have the potential to cause disputes although in the event of a government-enforced shutdown tenants of buildings would be expected to comply with orders issued by the government and this would likely override the trading covenant, although this too is a question for the lawyers and potentially the court.

s22(1)(a)(ii)

Brenton

From: s22(1)(a)(ii) <[REDACTED]@pm.gov.au>

Sent: Wednesday, 25 March 2020 11:01 PM

To: Duggan, Simon <Simon.Duggan@pmc.gov.au>; Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>

Cc: s22(1)(a)(ii) <[REDACTED]@pm.gov.au>; s22(1)(a)(ii) <[REDACTED]@pm.gov.au>

Subject: Commercial rents in shopping centres [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi,

I have heard of some feedback from medium-sized businesses reaching out to the Treasurer and his office suggesting that many retailers would much prefer to be shutdown by the government than what is currently happening based on the medical advice. They claim that if they were shut down they would more easily be able to trigger covenants in their rental agreements to avoid having to pay rent for a store with no/little business, as well as claiming that it was easier then to stand down workers rather than the current situation.

Could I please get the Department to verify these points (not sure these are all your areas)? In that I don't mean with specific companies, but in general commercial tenancy agreements would the provisions in the case of government-mandated lockdowns assist more in retailers not having to meet those overheads?

s22(1)(a)(ii)

Happy to discuss in the morning, but would be good to get an initial read on these questions swiftly.

s22(1)(a)(ii)

Office of the Prime Minister, the Hon Scott Morrison MP
MG 8, Parliament House, Canberra ACT 2600

p. s22(1)(a)(ii)

e. s22(1)(a)(ii) [@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)

From: Goldsworthy, Brenton
Sent: Sunday, 29 March 2020 11:32 AM
To: s22(1)(a)(ii)
Cc: Johnson, Shane
Subject: FW: OFFICIAL-SENSITIVE: Paper on tenancies [SEC=PROTECTED]
Attachments: BoT 28 March 2020 - Item 2 Residential and Commercial Tenancies.pdf

Importance: High

PROTECTED

From: Reed, Tristan
Sent: Sunday, 29 March 2020 11:31 AM
To: Goldsworthy, Brenton ; Patterson, Cath ; Roper, Matthew
Cc: s22(1)(a)(ii)
Subject: FW: OFFICIAL-SENSITIVE: Paper on tenancies [SEC=PROTECTED]
Importance: High

PROTECTED

I'm still reading through this...

From: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@TREASURY.GOV.AU](mailto:s22(1)(a)(ii)@TREASURY.GOV.AU)>
Sent: Sunday, 29 March 2020 10:50 AM
To: 'NAIKAR, Sidesh' <Sidesh.NAIKAR@secure.dss.gov.au>; PHILP, Brenton <Brenton.Philp@secure.dss.gov.au>; 'WESTACOTT, Veronica' <Veronica.WESTACOTT@dss.gov.au>; Reed, Tristan <Tristan.Reed@pmc.gov.au>
Subject: FW: OFFICIAL-SENSITIVE: Paper on tenancies [SEC=PROTECTED]
Importance: High

PROTECTED

Try this

PROTECTED

From: Wilkinson, Vicki <Vicki.Wilkinson@treasury.gov.au>
Sent: Sunday, 29 March 2020 9:50 AM
To: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@TREASURY.GOV.AU](mailto:s22(1)(a)(ii)@TREASURY.GOV.AU)>
Subject: FW: OFFICIAL-SENSITIVE: Paper on tenancies [SEC=PROTECTED]

PROTECTED



Australian Government
The Treasury

Vicki Wilkinson
Division Head
Social Policy Division
The Treasury, Langton Crescent, Parkes ACT 2600
☎ s22(1)(a)(ii) | 💻 vicki.wilkinson@treasury.gov.au
✉ Langton Crescent Parkes ACT 2601

PROTECTED

From: Amy Auster (DTF) <amy.auster@dtf.vic.gov.au>
Sent: Sunday, 29 March 2020 9:41 AM
To: Wilkinson, Vicki <Vicki.Wilkinson@treasury.gov.au>
Cc: Andrew H Witchard (DTF) <Andrew.Witchard@dtf.vic.gov.au>; s47F
s47F <s47F@dtf.vic.gov.au>; David Martine (DTF) <david.martine@dtf.vic.gov.au>; Wilkinson, Jenny
<Jenny.Wilkinson@TREASURY.GOV.AU>
Subject: OFFICIAL-SENSITIVE: Paper on tenancies

Hi Vicki

An update from BOT.

State and territory Treasurers met last night and agreed a communique and a letter to send to the Commonwealth Treasurer. The letter will be signed by the Victorian Treasurer as Chair of BOT. The Commonwealth Treasurer should receive this letter around 10:15 am.

The Victorian Treasurer's office has agreed to share at the officials level a paper that was presented at BOT last night. The paper lays out the principles behind treatment of residential and commercial tenancies and was the basis for the language that the Commonwealth Treasurer will see in the letter and communique on this issue.

Kind regards
Amy

Amy Auster

Deputy Secretary – Economic Division
Department of Treasury and Finance
L11, 1 Treasury Place, East Melbourne, 3002
T s47F | E amy.auster@dtf.vic.gov.au | W www.dtf.vic.gov.au

Executive Assistant: s47F <s47F@dtf.vic.gov.au>


This office is located on the land of the Traditional Owners of the Kulin Nation



OFFICIAL-SENSITIVE

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s47B, s47E(d)



From: Patterson, Cath
Sent: Thursday, 26 March 2020 7:51 AM
To: s22(1)(a)(ii) Wood, Mark
Cc: s22(1)(a)(ii) Roper, Matthew
Subject: FW: Residential and Commercial tenancy issues - s34(3)
s34(2) - s47E(d) - Canberra s47E(d)
[SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Craig

Treasurer's paper on commercial tenancies is coming to s34(3) today ahead of a further discussion of this issue at National Cabinet on Friday morning

s47B

Mark – I will also share draft with you given links with rental assistance and other measures which will assist the renter and the landlord.

Cath

From: Cabinet Operations
Sent: Wednesday, 25 March 2020 11:40 PM
To: Cabinet Operations ; COVID-19 ; COVID-19 SES
Cc: CabDiv National Security ; McGregor, Leonie ; Hupalo, Paul ; s22(1)(a)(ii) ; s47B ; s47B ; s47B ; Wheate, Rebekka ; Strapp, Matthew ; s47B ; s47B
Subject: RE: s34(3) - s34(2) - s47E(d) Canberra s47E
[SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Good evening all,

A **revised version** of the s47E(d) agenda has been s47E(d) y and circulated on CabNet+.

The following items have been added:

s34(3)

s34(3) - s34(2) - s47E(d) - Canberra PHBR

The s47E(d) that products for tomorrow's meeting are due at **10:00am Thursday, 26 March 2020**. Grateful if you can re-iterate these deadlines to Departments in your conversations with them.

Final cleared PM briefs are due to CabinetOperations@pmc.gov.au by **10:00am tomorrow** (26 March 2020).

Please advise **note taker details** as soon as possible.

s34(3)

[Redacted content]

Note taker	NO
------------	----

s22(1)(a)(ii)

	3.
--	----

s22(1)(a)(ii)

[Redacted content]

s22(1)(a)(ii)

[Redacted content]

Please do not circulate this email outside the PM&C PROTECTED network.

Kind regards

s22(1)(a)(ii)

Cabinet Operations | Cabinet Division

Department of the Prime Minister and Cabinet

p. s22(1)(a)

m. s22(1)(a)(ii)



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: Cabinet Operations <CabinetOperations@pmc.gov.au>

Sent: Wednesday, 25 March 2020 6:33 PM

To: COVID-19 <COVID-19@pmc.gov.au>; COVID-19 SES <COVID-19SES@pmc.gov.au>

Cc: Cabinet Operations <CabinetOperations@pmc.gov.au>; CabDiv National Security <CabDivNationalSecurity@pmc.gov.au>; McGregor, Leonie <Leonie.McGregor@pmc.gov.au>; Hupalo, Paul <Paul.Hupalo@pmc.gov.au>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; Wheate, Rebekka <Rebekka.Wheate@pmc.gov.au>

Subject: s22(1)(a)(ii) – s34(2) s47E(d) – Canberra s47E
[SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Good evening all

An s47E(d) Meeting has been scheduled for s34(2) and an Agenda circulated via CabNet+. Please see details below:

s34(3) – s34(2) – s47E(d) – Canberra PHBR

The s47E(d) that products for tomorrow's meeting are due at **10:00am Thursday, 26 March 2020**. Grateful if you can re-iterate these deadlines to Departments in your conversations with them.

Final cleared PM briefs are due to CabinetOperations@pmc.gov.au by **10:00am tomorrow** (26 March 2020).

note taker details

Note Taker

NO

RESPONSIBLE

CO-OPTED

s22(1)(a)(ii)

Is34(3)

Page 10

3.

s22(1)(a)(ii)

5.

s22(1)(a)(ii)

Please do not circulate this email outside the PM&C PROTECTED network.

Kind regards

s22(1)(a)(ii)

Cabinet Operations | Cabinet Division

Department of the Prime Minister and Cabinet

p: s22(1)(a)(ii) [@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)

w: www.dpmc.gov.au

One National Circuit Barton | GPO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

From: Burton, Mark
Sent: Thursday, 26 March 2020 4:21 PM
To: s22(1)(a)(ii) s22(1)(a)(ii)
Subject: FW: s34(2)
[SEC=PROTECTED, CAVEAT=SH:CABINET]
Attachments: s34(2)
s34(2)
Proposal.pdf

PROTECTED//CABINET

FYI – it looks like the commercial tenancies proposals s47C, s47E(d).

M

Mark Burton | A/g Branch Manager
Taxation, Financial Sector and Employment Branch
Economic Division | Department of the Prime Minister and Cabinet
p. s22(1)(a)(ii) | m. s22(1)(a)(ii)
e. mark.burton@pmc.gov.au
One National Circuit Barton ACT 2600

s22(1)(a)(ii)

S

s22(1)(a)(ii)

From: Burton, Mark <Mark.Burton@pmc.gov.au>

Sent: Thursday, 26 March 2020 3:33 PM

To: Cabinet Operations <CabinetOperations@pmc.gov.au>

Subject: RE: s34(2) [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks s22(1)(a)(ii)

Do you have a link to, or copy of, the Attachment A? I only have the PM&C brief on this one.

M

Mark Burton | A/g Branch Manager

Taxation, Financial Sector and Employment Branch

Economic Division | Department of the Prime Minister and Cabinet

p. s22(1)(a)(ii) m. s22(1)(a)(ii)

e. mark.burton@pmc.gov.au

One National Circuit Barton ACT 2600

From: Cabinet Operations <CabinetOperations@pmc.gov.au>

Sent: Thursday, 26 March 2020 3:29 PM

To: Burton, Mark <Mark.Burton@pmc.gov.au>

Subject: s34(2) [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi Mark

Draft s34(2) minute attached.

Kind regards

s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Wednesday, 1 April 2020 9:15 PM
To: Patterson, Cath; s22(1)(a)(ii)
Subject: Fwd: Commercial Rents [SEC=OFFICIAL]
Attachments: LEASES AND LAND TAX FOR NATIONAL CABINET.pdf; ATT00001.htm

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

Sent from my iPad

Begin forwarded message:

From: s22(1)(a)(ii)
Date: 1 April 2020 at 9:04:41 pm AEDT
To: "s22(1)(a)(ii)"
Cc: s22(1)(a)(ii)
Subject: Commercial Rents [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Please find attached what we have provided back to State and Territory Treasurers' to reflect discussions this afternoon.

Thanks

s22(1)(a)(ii)

Adviser
Office of the Treasurer
The Hon. Josh Frydenberg MP
Parliament House, Canberra
Mobile: s22(1)(a)(ii)
[s22\(1\)\(a\)\(ii\)@treasury.gov.au](mailto:s22(1)(a)(ii)@treasury.gov.au)

OFFICIAL

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From: Patterson, Cath
Sent: Tuesday, 31 March 2020 8:39 AM
To: Goldsworthy, Brenton; s22(1)(a)(ii) jenny.wilkinson@treasury.gov.au; s22(1)(a)(ii)
Cc: s22(1)(a)(ii)
Subject: National Cabinet - further comeback on commercial and residential tenancies [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi

National Cabinet agreed last night that they wanted to finalise arrangements for both commercial and residential tenancies at their meeting this Friday.

As per below extract for the draft Minute – they have tasked Treasurers to bring back concrete proposals on both for the Friday meeting. s47B

Tasked Treasurers to bring back to the next meeting, concrete proposals on both commercial and residential tenancies.

Would appreciate it if you could make sure this is progressing as planned and that there will be proposals for both types of tenancies by the Friday morning meeting (the item will also be listed for the s47E(d)

Regards

Cath

Cath Patterson

a/g Deputy Secretary | Social Policy

Department of the Prime Minister and Cabinet

s22(1)(a)(ii) | E: cath.patterson@pmc.gov.au

Location: Andrew Fisher Building, 1 National Crct Barton

PO Box 6500, Canberra ACT 2601, Australia

EA: s22(1)(a)(ii) [@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)

From: Reed, Tristan
Sent: Sunday, 29 March 2020 1:57 PM
To: Cabinet Operations; CabDivDomesticPolicy; s22(1)(a)(ii)
Cc: Fiscal - Domestic Policy; Patterson, Cath; Goldsworthy, Brenton; s22(1)(a)(ii)
s22(1)(a)(ii) Roper, Matthew; Hupalo, Paul; Poels, Wayne
Subject: PM Brief - National Cabinet - Tenancies - 29 March (005) [SEC=PROTECTED]
Attachments: PM Brief - National Cabinet - Tenancies - 29 March (005).docx

PROTECTED

Hi

Apologies for the lateness, please find attached a PM briefing for the tenancies agenda item for National Cabinet. Please note, we have not seen the final paper that will be lodged for this agenda item.

Thanks

Tristan

Prime Minister's National Cabinet Brief

Title Commercial and Residential Tenancies

Meeting 29 March 2020

Summary

Jurisdictions will be providing a paper for National Cabinet, however the paper will only be available just before the meeting commences.

We understand state and territory treasurers have agreed that short term intervention is required in commercial and residential tenancies to avoid permanent dislocation in the property market due to the impacts of COVID-19. The proposed intervention will support tenants through preventing evictions and enabling reduced rent payments, essentially sharing the burden between landlords, tenants and government.

States and territories have agreed to a temporary moratorium on rent increases and evictions for non-payment to be applied across all tenancies immediately. States and territories propose to then establish a state-based entity in each jurisdiction to verify rental distress and provide financial support through a scheduled reduction in rental payments. They also propose working with financial institutions to provide support to landlords.

What do we want to achieve?

- States and territories to agree a consistent approach to the provision of commercial and residential rent relief, and to communicate this clearly to Australians.

s47B, s47E(d)

Other jurisdictions' objectives and sensitivities

- States and territories are seeking National Cabinet's endorsement of their suggested approach. They will establish a working group to implement and administer the new arrangement.

s47B, s47E(d)

Key Points and Recommended Action

Thank the states and territories for working collaboratively to develop options to provide relief to businesses and residential tenancies, and **welcome** discussion of their proposed approach.

Moratorium on Evictions

s47B, s47E(d)

- A moratorium on commercial and residential evictions for non-payment will give tenants financial breathing room, and provide states and territory governments' time to establish rental distress (cost-sharing) financial support schemes.
- There will need to be clear communication that this is not a signal to not pay rent. People who can pay rent are required to do so.

s47B, s47E(d)

- The Commonwealth Government has already provided strong cash flow support to businesses in its economic stimulus packages. This support should ease the pressure on small businesses, including in maintaining their commercial lease obligations
- In the first instance, businesses experiencing financial difficulties or distress should make use of this support, or negotiate with their landlords to obtain rental abatements, surrender of the lease or other relief (depending on their preferences). Landlords can also look to the banks for financial support.
- The Commonwealth Government has also already announced significant measures to increase the amount of income support people impacted by COVID-19 receive, and is considering what further support is needed.
- The Commonwealth's primary (and preferred) mechanism to support people in rental stress is through the income support system, including through Commonwealth Rent Assistance. Any further Commonwealth support will be considered in that context.

s47B, s47E(d)

Agree the Commonwealth can consider what information it can provide to jurisdictions to support this Scheme, noting there are legislative barriers to the information it can provide.

Contact Officer:
Commercial Tenancies
s22(1)(a)(ii)
Economic Policy Branch, Economic Division

Residential Tenancies

SES Officer:
Commercial Tenancies
Shane Johnson, s22(1)(a)(ii)
Economic Policy Branch, Economic Division

Residential Tenancies

s22(1)(a)(ii) Social Services Branch, Social Policy Division	Tristan Reed, s22(1)(a)(ii) Social Services Branch, Social Policy Division
---	---

From: Duggan, Simon
Sent: Thursday, 2 April 2020 1:05 PM
To: Goldsworthy, Brenton
Cc: Gaetjens, Phil; Poels, Wayne; Patterson, Cath, s22(1)(a)(ii); Johnson, Shane; Ranjit, Jessica
Subject: Re: Commercial tenancies [SEC=PROTECTED]

Thanks, s47C, s47E(d)

Cheers,
Simon

Sent from my iPhone

On 2 Apr 2020, at 12:54 pm, Goldsworthy, Brenton wrote:

PROTECTED

Phil, Simon

I understand from Wayne that at s47C, s47E(d)
in regards to commercial tenancies, s22(1) who is our expert on this and has been working closely
with Treasury, has provided the following advice. As you can see, s47C, s47E(d)

s47C, s47E(d)

At present, we have no information on which route industry and the states and territories may pursue.

Brenton

Brenton Goldsworthy | First Assistant Secretary

Economic Division | Department of the Prime Minister and Cabinet

p. s22(1)(a)(ii)

e. Brenton.Goldsworthy@pmc.gov.au | w. www.pmc.gov.au

One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

From: Matthew Brine
Sent: Wednesday, 25 March 2020 1:50 PM
To: s22(1)(a)(ii)
Subject: RE: Draft agenda for National Cabinet tomorrow [SEC=PROTECTED, CAVEAT=SH:CABINET]
Attachments: Measures to support SME tenants Framework to TO.docx

PROTECTED//CABINET

Hi s22(1)(a)(ii)

This is the paper that the Treasurer's Office have worked up for the meeting.

s47C, s47E(d)

Kind regards, Matt

PROTECTED//CABINET

From: s22(1)(a)(ii)
Sent: Wednesday, 25 March 2020 1:05 PM
To: s22(1)(a)(ii)
Subject: FW: Draft agenda for National Cabinet tomorrow [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Looks like the meeting is scheduled for 6.30PM – draft agenda attached.

s22(1)(a)(ii) | Microeconomics | Economic Division | Department of Prime Minister and Cabinet
📞 s22(1)(a)(ii) @pmc.gov.au

From: s22(1)(a)(ii) @pmc.gov.au
Sent: Wednesday, 25 March 2020 8:12 AM
To: Patterson, Cath <Cath.Patterson@pmc.gov.au>; Reed, Tristan <Tristan.Reed@pmc.gov.au>; Jones, Trevor <Trevor.Jones@pmc.gov.au>; Roper, Matthew <Matthew.Roper@pmc.gov.au>; s22(1)(a)(ii) @pmc.gov.au; s22(1)(a)(ii) @pmc.gov.au; Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>; s22(1)(a)(ii) @pmc.gov.au; s22(1)(a)(ii) @pmc.gov.au; Johnson, Shane <Shane.Johnson@pmc.gov.au>
Cc: Disaster Preparedness and Response Branch <DPRB@pmc.gov.au>
Subject: RE: Draft agenda for National Cabinet tomorrow [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Hi all,

To ensure we are all on the same page, please see below tasking for today's items for Nat Cab. Happy to discuss.

Item	Brief	Notes
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s22(1)(a)(ii)



Options for Commercial
Tenancies
(Short-form paper X refers)

Eco Div s22(1) o help)

s47C, s47E(d)

s22(1)(a)(ii)



Regards,

s22(1)(a)(ii)

From: Patterson, Cath <Cath.Patterson@pmc.gov.au>

Sent: Wednesday, 25 March 2020 6:29 AM

To: Reed, Tristan <Tristan.Reed@pmc.gov.au>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; Jones, Trevor <Trevor.Jones@pmc.gov.au>; Roper, Matthew <Matthew.Roper@pmc.gov.au>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>; Goldsworthy, Brenton <Brenton.Goldsworthy@pmc.gov.au>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s22(1)(a)(ii)@pmc.gov.au)>

Subject: FW: Draft agenda for National Cabinet tomorrow [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Bootleg version of the agenda – but let's work off this for now.

See tasking email of late last night

C

From: CSO-DLO <cso-dlo@cs.pm.gov.au>

Sent: Tuesday, 24 March 2020 10:52 PM

To: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)>

Cc: CSO-DLO <cso-dlo@cs.pm.gov.au>; s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@pm.gov.au](mailto:s22(1)(a)(ii)@pm.gov.au)>; Pregellio, Nina <Nina.Pregellio@pmc.gov.au>; Patterson, Cath <Cath.Patterson@pmc.gov.au>; Gaetjens, Phil <Phil.Gaetjens@pmc.gov.au>

Subject: Draft agenda for National Cabinet tomorrow [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

s22(1)(a)(ii)

Hi

We've talked the draft agenda for tomorrow's National Cabinet through with Cath and landed on the attached for your clearance.

Cc'ing the Secretary as well for visibility.

Thanks

s22(1)(a)(ii)

s22(1)(a)(ii)

Cabinet Liaison Officer

Office of the Prime Minister, the Hon Scott Morrison MP

MG.10 Cabinet Suite, Parliament House

s22(1)(a)(ii)

e. cs-dlo@cs.pm.gov.au | s22(1)(a)(ii) pmc.gov.au

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Measures to support SME tenants

Proposal

1. State and Commonwealth Governments to provide s47B, 47E(d)
[REDACTED]
2. Land tax for this calendar year on commercial/retail properties with SME tenants (under \$50m) will be waived for the landlord, provided the landlord negotiates a revised rental agreement with the tenant that reflects current trading conditions. s47B, 47E(d)
[REDACTED]
3. **In the event that a SME is still trading** State Governments will facilitate discussions between landlords, tenants and their representatives to reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their tenants **that reflect the current economic conditions.**
4. s47B, 47E(d)
[REDACTED]
5. s47B, 47E(d)
[REDACTED]
6. s47B, 47E(d)
[REDACTED]
7. The Commonwealth Government will explore incentives through the tax system to reward landlords for the provision of any rent relief during this period.

Principles

1. Where appropriate losses should be shared by all parties (tenants and landlords).
2. Government should support incentives for loss sharing by all parties and make a contribution.
3. Business should be supported so they can survive the economic impacts of the COVID-19 pandemic.
4. Tenants should be able to demonstrate financial distress from COVID-19.

Desired Outcomes

1. State Governments have a primary role to play in creating appropriate incentives.
2. Commonwealth Government can provide additional support to reinforce State incentives through the tax system for landlords.
3. Commonwealth and State governments should lead by example (i.e. Government properties which are leased).
4. Landlords should be incentivised to negotiate temporary rent relief reductions s47B, 47E(d)
s47B, 47E(d)
5. Tenants should be incentivised to keep their business open, or modify it. No action should incentivise the shutdown of businesses.

6. Financers interact with Tenants and Landlords. There is already relief available for Tenants, this is fixed (e.g. SME Guarantee Scheme, Quick and Effective Access to Credit for Small Business).
7. Financers should, where possible and appropriate, support landlords who engage participate in sharing the temporary losses as a result of the economic shock.

What each party will be expected to contribute

Party	Contribution
State Government (Incentive setting and contribution)	s47B, 47E(d)
Landlord (Contribution)	Reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their tenants.
Tenant (Contribution)	Reach voluntary rental abatement agreements (including rent reduction, waiver, deferral) with their Landlord.
Commonwealth Government (Incentive setting and contribution)	Incentives through the tax system to reward landlords for the provision of any rent relief during this period.
Financers (Incentive setting and contribution)	Support for SME landlords via access to credit.

In addition state and commonwealth governments will lead by example. State and Commonwealth Governments to s47B, 47E(d)

From: Goldsworthy, Brenton
Sent: Thursday, 2 April 2020 6:13 PM
To: s22(1)(a)(ii) Johnson, Shane
Cc: s22(1)(a)(ii)
Subject: RE: Draft: National Cabinet Brief - Commercial Tenancies [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Thanks s22(1)(a)(ii) I haven't had the chance to read your brief in detail but given the time of day I just wanted to make sure you cover options for s47B, s47C

s47B, s47C

it. Maybe something in the background? Brenton

From: s22(1)(a)(ii)
Sent: Thursday, 2 April 2020 6:01 PM
To: Goldsworthy, Brenton ; Johnson, Shane
Cc: s22(1)(a)(ii)
Subject: Draft: National Cabinet Brief - Commercial Tenancies [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

For Comment:

Brenton/Shane,

I have drafted a first cut of the PM Brief for the Commercial Tenancies item at National Cabinet tomorrow – your comments are welcome.

We are yet to receive a paper from s47B, s47C

I can update this once we receive the paper s47B, s47C

Thanks

s22(1)(a)(ii)

s22(1)(a)(ii) A/g Manager
Microeconomic Reform, Competition Policy and Consumers | Economic Policy Branch | Economic Division
Department of Prime Minister and Cabinet
☎ s22(1)(a)(ii) | ✉ s22(1)(a)(ii)@pmc.gov.au
One National Circuit BARTON ACT 2600 | PO Box 6500 CANBERRA ACT 2600

NATIONAL CABINET

STATE AND TERRITORY COVID-19 RESIDENTIAL RENTAL SECTOR RESPONSE

Purpose	FOR AGREEMENT
Author	VICTORIA and SOUTH AUSTRALIA

RECOMMENDATIONS

1. **AGREE** that all jurisdictions work within their legislative and regulatory parameters to immediately defer the commencement of eviction proceedings by private landlords for rental arrears for a period of 2 months. This will ensure that private rental tenants are not evicted for rental arrears while waiting for income support or rental subsidy payments to commence, or partially paying rents while waiting for that support
2. **AGREE** that Victoria, South Australia and the Commonwealth lead work across jurisdictions to urgently assess the need for rental assistance for lower to middle income earners in the private rental market as follows:
 - a. Options for emergency rental assistance to address potential delays in Commonwealth payments flowing to tenants in the private rental market, through additional Commonwealth funding for targeted assistance for tenants in severe private rental distress as a result of reduced income
 - b. Additional targeting and funding for Commonwealth Rental Assistance for specific groups that are at risk of losing tenancies due to income loss and precarious circumstances beyond the recent extension of Jobseeker payments. The analysis will consider factors like regional differences in rental costs and ability to access employment
 - c. A report back on options by 3 April 2020.
3. **AGREE** that the Commonwealth will work with financial institutions to extend mortgage freezes and deferrals for three months to investors operating rental properties
4. **AGREE** to a nationally coordinated information system of support and advice for landlords and tenants on obligations and responsibilities under the new arrangements and managing COVID within tenancies, providing general national information and directing users to state-specific information
5. **NOTE** public housing authorities are implementing appropriate assistance (policies and programs) for tenants who may experience financial hardship as a result of COVID-19 pandemic to avoid unnecessary evictions and they will work with the community housing sector to align responses
6. **NOTE** that this is a first stage response and the Victorian and South Australia will work with other jurisdictions to update the suite of rental initiatives for consideration by National Cabinet as circumstances change

Background:

The National Cabinet proposed and the Prime Minister announced that jurisdictions would work to *"Identify how relief can be provided to tenants in both commercial and residential tenancies, to*

ensure that in hardship conditions, there will be relief that will be available, and ensuring that tenancy legislation is protecting those tenants over the next six months at least”.

Given the uncertainty of the situation and potential impact on the ability of tenants across the private rental markets and social housing markets to sustain tenancies where their income has been affected by loss of employment or a related loss of income, our responses will necessitate a scaling up or strengthening of measures to address current and emerging risks.

A staged approach for the next three-month period is suggested with:

- 1. Action to prevent unnecessary evictions caused by short term shocks to a tenant's inability to pay rent*
- 2. An immediate and accelerated rental assistance package aimed to slow the impact of potential income loss and ability to pay rent across the housing market*
- 3. Immediate discussions with financial organisations to defer mortgage payments for investors that rent properties*
- 4. Support and advice for landlord and tenants on these new arrangements.*

Proposals

1. Tenancy Protections from rent-related Eviction

An extension to the breach period for non-payment of rent across the whole rental market provides tenants time and confidence to access alternative income sources. This delay will respond to the progressive roll-out of additional Commonwealth social security payments, as well as prevent homelessness and broader social isolation measures being implemented for COVID19.

Each jurisdiction may have a different set of legislative and regulatory requirements for achieving this measure. Changes to legislation (Act amendments) are likely required, which may delay implementation, but provides opportunity to review other measures such as lease break fees. There is a risk that immediate policy may not influence the number of people evicted as a result of rent arrears. We think states should consider pausing no cause evictions and similar regulations.

It is critical government messaging is specific that protections from evictions are isolated exclusively to rent arrears for those affected by the current economic environment. In the first instance, households should seek support to manage rental repayments, including through the above measures to extend private rental support.

Many public and community housing households on statutory incomes will have increased incomes as a result of the Commonwealth additional JobSeeker payments. Low income households in public and community housing not impacted by COVID 19 should not be encouraged to accumulate rent arrears as this will lead to future financial stress for these households.

Jurisdictions can also develop an agreed set of tenancy issues and outcomes that state governments will act on to support tenancy sustainment and rental market sustainability during the COVID-19 situation. This could include support for tenancy sustainment beyond unnecessary evictions and consider options to:

- strengthen tenant rights to refuse entry for non-essential reasons, particularly if they have a high-risk profile or are required to self-isolate or quarantine
- restrict rent increases (frequency, cap, review mechanisms)

- prevent tenancy database listings for rent arrears

2. Extended private rental support

Jurisdictions are aware that despite recent increases to Commonwealth payments, a range of low to medium income families reliant on the private rental market may be increasingly be unable to pay rents due to a loss or decrease in their income.

A detailed analysis of gaps in the private rental assistance support system, as well as how targeted assistance from Commonwealth and States can address those gaps needs to be undertaken as a priority.

Victoria, South Australia and the Commonwealth will lead work across jurisdictions to identify those gaps across the CRA and state based private rental assistance programs as a short-term measure.

Many jurisdictions offer some private rental support, through bond assistance, rent in advance and emergency relief support. However this is generally for new tenants and is time limited eg one week rent in advance.

Immediate financial assistance in the event of job loss or the loss of customers for the self-employed to pay for rent may be required to maintain tenancy and prevent evictions, while applying for other medium-term rental subsidies eg JS/ CRA. This could include exploring any existing private rental assistance programs and their eligibility requirements.

Immediate implementation for 3-month program intervals, subject to review for up to 12 months. Level of assistance to be determined based on need and eligibility for other assistance. Administrative arrangements would need review, staffing/systems capacity across jurisdictions, though most have existing schemes that could be scaled up, should government commit additional funds.

3. Mortgage freeze for Landlords

In recent days the banks have announced 6-month mortgage freezes for personal home loans, It is understood this only applies to owner-occupiers.

It is proposed that the Commonwealth and State government's advocate with the banking industry to extend this to landlords with loans for their properties they rent to tenants. Whilst the above measures present the opportunity to ensure tenants have income to pay their rent and maintain their current tenancies, there may be circumstances where rental payments are delayed or missed and as such landlords may have difficulty with their loan repayments.

If the bank provide landlords with the ability to pause or freeze repayments, it will offer further protection to the housing market. There may be general support for the option of extending the mortgage freeze, noting that the banks have already done this for small businesses and homeowners. However banks will likely need assurance from APRA that they will similarly not need to report these loans as loans in arrears. Further work is required on the percentage of landlords that own the properties outright compared to those with a mortgage to determine the most appropriate support mechanism.

4. Support and Advice for Landlords

While protection for tenants is important, providing additional support and advice to minimise landlord reactions and increase awareness around supports available is also required. Short term advice to landlords to ensure they are planned and minimise any financial losses and minimise evictions, as new tenants will be hard to find and if they occur on a large scale will impact on property values

Further support could be provided through accountants and financial advisers made available to landlords to provide tax and financial advice, aid in communication with financial institutions and Commonwealth around mortgage freezes. Could be implemented through statewide contract to small scale accountancy practices (supports local business). Scale and costings to provide free advice to be determined.

Communication package to tenants and landlords to also be developed by States with national advice on obligations under new arrangements including dealing with COVID cases and social isolation, landlord and tenant obligations eg FAQs on websites. Financial advisory services would benefit both tenants and landlords affected by COVID-19. This could include an expansion of legal services to support parties navigate and negotiate hardship arrangements or engaging a legal services supplier to develop hardship templates as part of the nationally coordinated support and advisory portal.

The Commonwealth notes it can provide some coordination including the preparation of national online information (with links to state agencies) and consistent messaging on general policy objectives. States will be responsible for maintaining their own information on jurisdictional legislation and local housing authorities policies on tenants and rent which the national information will need to link to.

5. Public and Community Housing Evictions

Housing departments across the country control the policies for evictions that result from rent arrears. Through operational changes it is proposed they each implement guidelines to not evict existing tenants for rent arrears for the next 6 months that lose income due to a COVID19 loss of income.

This is particularly relevant for those tenants that are existing income earners and will have to transfer to Jobseeker payments and any lag in this process that might result in rent arrears for these relevant tenants.

Jurisdictions will propose a similar approach is relayed to community housing providers, particularly noting the important role they play in managing state owned housing and providing housing to vulnerable people.

The Commonwealth would be open to working with states, the CHP sector, and NHFIC to identify the risks arising from corona virus on their financial positions. The aim of this work would be to maintain consistent arrangements for all social housing tenants while addressing the specific risks impacting the CHP sector.

States and Territories are committed to ensuring that social housing tenants have access to the full Jobseekers supplement and related payments and will not be assessing this income for rent purposes.

HOUSING OFFICIALS CONTRIBUTION

NATIONAL CABINET

STATE AND TERRITORY COVID-19 RESIDENTIAL RENTAL SECTOR RESPONSE

Purpose	FOR AGREEMENT
Author	VICTORIA and SOUTH AUSTRALIA

RECOMMENDATIONS

1. **AGREE** that all jurisdictions work within their legislative and regulatory parameters to immediately and taking effect from announcement by National Cabinet:

s47B, s47C

Commented [AC1]: New Recommendations for States consideration

2. **AGREE** that Victoria, South Australia and the Commonwealth lead work across jurisdictions to urgently assess the need for financial assistance for lower to middle income earners in the private rental market, including:
- States and Territories to consider options for emergency rental assistance as deemed necessary and appropriate;
 - The Commonwealth to consider additional, targeted and time-limited assistance for specific groups that are at risk of losing tenancies due to income loss and precarious circumstances, even after the recent extension of Jobseeker payments.
 - States and Territories to develop and implement other responses, as required, to ensure the adequate provision of housing and homelessness assistance for those affected by Covid-19 in their jurisdiction.
3. **AGREE** to the States developing a nationally consistent information system of support and advice for landlords and tenants on obligations and responsibilities under the new arrangements and managing COVID within tenancies, providing general national information and directing users to state-specific information.

s47B, s47C

Commented [AC2]: New recommendation for States consideration

HOUSING OFFICIALS CONTRIBUTION

6. **NOTE** public housing authorities are implementing appropriate assistance (policies and programs) for tenants who may experience financial hardship as a result of COVID-19 pandemic to avoid unnecessary evictions and they will work with the community housing sector to align responses
7. **NOTE** that this is a first stage response and the Victorian and South Australia will work with other jurisdictions to update the suite of rental initiatives for consideration by National Cabinet as circumstances change.

Background:

The National Cabinet proposed and the Prime Minister announced that jurisdictions would work to *“Identify how relief can be provided to tenants in both commercial and residential tenancies, to ensure that in hardship conditions, there will be relief that will be available, and ensuring that tenancy legislation is protecting those tenants over the next six months at least”*.

Given the uncertainty of the situation and potential impact on the ability of tenants across the private rental markets and social housing markets to sustain tenancies where their income has been affected by loss of employment or a related loss of income, our responses will necessitate a scaling up or strengthening of measures to address current and emerging risks.

A staged approach is suggested with:

1. *Action to prevent unnecessary evictions caused by short term shocks to a tenant's inability to pay rent*
2. *A financial assistance package aimed to slow the impact of potential income loss and ability to pay rent across the housing market*
3. *Support and advice for landlord and tenants on these new arrangements.*

Proposals

1. Tenancy Protections from rent-related Eviction

An extension to the breach period for non-payment of rent across the whole rental market provides tenants time and confidence to access alternative income sources. This delay will respond to the progressive roll-out of additional Commonwealth social security payments, as well as prevent homelessness and broader social isolation measures being implemented for COVID19.

Each jurisdiction may have a different set of legislative and regulatory requirements for achieving this measure. Changes to legislation (Act amendments) are likely required, which may delay implementation, but provides opportunity to review other measures such as lease break fees. There is a risk that immediate policy may not influence the number of people evicted as a result of rent arrears. We think states should consider pausing no cause evictions and similar regulations.

Further, to overcome any timing gap in implementation, this measure should take effect from the date of announcement by National Cabinet (therefore effective immediately and subject to passage of legislation).

It is critical governments messaging is specific that protections from evictions are isolated exclusively to rent arrears for those affected by the current economic environment. In the first instance, households should seek support to manage rental repayments, including through the above measures to extend private rental support.

HOUSING OFFICIALS CONTRIBUTION

Many public and community housing households on statutory incomes will have increased incomes as a result of the Commonwealth additional JobSeeker payments. Low income households in public and community housing not impacted by COVID 19 should not be encouraged to accumulate rent arrears as this will lead to future financial stress for these households.

Jurisdictions can also develop an agreed set of tenancy issues and outcomes that state governments will act on to support tenancy sustainment and rental market sustainability during the COVID-19 situation. This could include support for tenancy sustainment beyond unnecessary evictions and consider options to:

- strengthen tenant rights to refuse entry for non-essential reasons, particularly if they have a high-risk profile or are required to self-isolate or quarantine
- restrict rent increases (frequency, cap, review mechanisms)
- prevent tenancy database listings for rent arrears

2. Extended private rental support

Jurisdictions are aware that despite recent increases to Commonwealth payments, a range of low to medium income families reliant on the private rental market may be increasingly be unable to pay rents due to a loss or decrease in their income as a result of COVID 19.

A detailed analysis of gaps in the private rental assistance support system, as well as how targeted assistance from Commonwealth and States can address those gaps needs to be undertaken as a priority.

Victoria, South Australia and the Commonwealth will lead work across jurisdictions to identify those gaps.

Many jurisdictions offer some private rental support, through bond assistance, rent in advance and emergency relief support. Arrangements current vary by state and can be for new tenants or time limited eg one week rent in advance. s47B, s47C

Immediate financial assistance in the event of job loss or the loss of customers for the self-employed to pay for rent may be required to maintain tenancy and prevent evictions, while applying for other medium-term rental subsidies eg JS/ CRA. This could include exploring any existing private rental assistance programs and their eligibility requirements.

Level of assistance to be determined based on need and eligibility for other assistance. Administrative arrangements would need review, staffing/systems capacity across jurisdictions, though most have existing schemes that could be scaled up, should government commit additional funds.

3. Support and Advice for Landlords

While protection for tenants is important, providing additional support and advice to minimise landlord reactions and increase awareness around supports available is also required. States need to provide landlords with advice in the short-term to assist in minimising their financial losses and also guard against any tenant evictions.

States will consider whether further support could be provided to landlords, eg - through accountants and financial advisers to assist with financial advice to landlords, having regard for

HOUSING OFFICIALS CONTRIBUTION

available assistance at all levels of government. Could be implemented through statewide contract to small scale accountancy practices (supports local business). Scale and costings to provide free advice to be determined.

Communication package to tenants and landlords to also be developed by States with nationally consistent advice on obligations under new arrangements including dealing with COVID cases and social isolation, landlord and tenant obligations eg FAQs on websites. Financial advisory services would benefit both tenants and landlords affected by COVID-19. This could include an expansion of legal services to support parties navigate and negotiate hardship arrangements or engaging a legal services supplier to develop hardship templates as part of the nationally coordinated support and advisory portal.

s47B, s47C

5. Public and Community Housing Evictions

Housing departments across the country control the policies for evictions that result from rent arrears. Through operational changes it is proposed they each implement guidelines to not evict existing tenants for rent arrears for the next 6 months that lose income due to a COVID19 loss of income.

This is particularly relevant for those tenants that are existing income earners and will have to transfer to Jobseeker payments and any lag in this process that might result in rent arrears for these relevant tenants.

Jurisdictions will propose a similar approach is relayed to community housing providers, particularly noting the important role they play in managing state owned housing and providing housing to vulnerable people.

States and Territories are committed to ensuring that social housing tenants have access to the full Jobseekers supplement and related payments and will not be assessing this income for rent purposes.

Prime Minister's National Cabinet Brief

Title State and Territory COVID-19 Residential Rental Sector Response

Meeting 27 March 2020

Summary

Victoria and South Australia are leading a first-stage response to concerns within the residential rental sector. They advise action is needed on preventing unnecessary evictions caused by COVID-related income shocks that would impede tenants' ability to pay rent; on immediately assessing the need for a rental assistance package for lower to middle income earners in the private rental market; and on developing a nationally-consistent communications strategy to support and advise landlords and tenants on new arrangements.

What do we want to achieve?

s47B, s47C

- Ensure states and territories develop a nationally consistent information system of support and advice for landlords and tenants on obligations and responsibilities under the new COVID-19 arrangements, providing general national information, and then directing users to state-specific tenancy information.
- Agree with jurisdictions - with Victoria and South Australia as the lead with support from the Commonwealth - to urgently assess the need for financial assistance for low to middle income earners in the private rental market. This includes emergency rental assistance options, time-limited assistance for specific groups at risk of losing tenancies (even after the extension of Jobseeker payments) and tailored responses targeted to those at risk of homelessness.

Other jurisdictions' objectives and sensitivities

s47B, s47C

Key Points and Recommended Action

You should thank Victoria and South Australia for leading on this item

- The loss of jobs for low and middle-income earners due to COVID-19 is likely to constrain the capability of tenants to sustain tenancies. This issue may be compounded by any delays in processing income support payment applications throughout this period.
- If tenants and landlords are not appropriately supported, the risk of homelessness and the negative shocks to the broader housing market, caused by potential mass evictions and the difficulty in replacing tenants, become much more likely.
- Jurisdictions were tasked with identifying relief provisions for tenants in both commercial and residential tenancies, to ensure those experiencing hardship receive support and will be protected by tenancy legislation over the next six-month period.
- The proposals made by Victoria and South Australia, incorporating input from the Commonwealth, provide an immediate-term strategy to manage the challenges within the rental residential sector.
 - Actions to prevent unnecessary evictions are important in the short-term to ensure vulnerable cohorts are not left homeless and landlords are not left without stable income. The need for states to consider pausing no cause evictions and similar regulations will assist in the immediate-term, while legislative and other policy

s47B, s47C

- It is important that some time is given to assessing where support needs are best targeted and that any subsequent options are regularly reviewed to ensure their ongoing appropriateness and effectiveness.
- A nationally consistent information strategy will be integral to ensuring clear support and advice is given to tenants and landlords. Advice to landlords will need to be particularly clear and consistent to minimise negative reactions and increase awareness around supports available to them.

s22(1)(a)(ii)


Contact Officer:
Mark Hasenbein, s22(1)(a)(ii)
Social Services, Indigenous and Veterans' Affairs
Branch, Social Policy Division

SES Officer:
Tristan Reed
Social Services, Indigenous and Veterans'
Affairs Branch, Social Policy Division

Consultation: Department of Social Services, Treasury, Economic Division, Commonwealth State Relations

Decisions of the National Cabinet for Australia's Coronavirus Response

s22(1)(a)(ii)



s22(1)(a)(ii)

	17	20 March 2020	SM20/0231/NATCAB	<p>a. New South Wales and Western Australia will develop options for assistance for tenants in commercial premises, particularly small and medium businesses, for consideration by the National Cabinet on Tuesday 24 March</p> <p>b. Victoria and South Australia will develop options for assistance for tenants in residential properties for consideration at a future meeting of the National Cabinet</p>	Item to be considered by National Cabinet on 24 March	
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s22(1)(a)(ii)

Prime Minister's National Cabinet Brief

Title Commercial and Rental Leases

Meeting National Cabinet, 7 April 2020.

Summary

You are leading a discussion on the draft mandatory commercial tenancies code of conduct.

What do we want to achieve?

- States and territories to agree to the draft commercial tenancies mandatory code of conduct and embed it in their legislation.

Other jurisdictions' objectives and sensitivities

s47B, 47E(d)

Key Points and Recommended Action

Emphasise the importance of states and territories moving together in a consistent and coordinated fashion.

Ask the states and territories to **agree** the draft mandatory commercial tenancies code of conduct.

- The draft mandatory code of conduct is in line with the principles agreed by National Cabinet on 3 April 2020 (including the principle of proportionality) and applies to commercial tenancies where the tenant is eligible for the Commonwealth's JobKeeper Payment.

Ask the states and territories to **agree** to implement the draft mandatory code of conduct through their own legislation.

s47B, 47E(d)


Note that the Commonwealth will continue to work with banks and other financial institutions on these issues.

s47B, 47E(d)

Risks and Sensitivities

s47B, 47E(d)

s47B, 47E(d)



Contact Officer:
Shelby Schofield, s22(1)(a)(ii)
Economic Policy Branch, Economic Division

SES Officer:
Shane Johnson, s22(1)(a)(ii)
Economic Policy Branch, Economic Division

National Cabinet for Australia's Coronavirus Response Submission

Title	Commercial and rental leases
Sponsoring Minister(s)	Treasurer

Summary

Proposed Action

That the National Coronavirus Cabinet **agree** to the attached mandatory Code of Conduct (the Code) which implements the principles agreed on Friday 3 April and builds on the draft codes submitted by landlord and tenant representative bodies in the commercial property sector.

While the draft codes provided a useful starting point, it failed to fully reflect the principle of proportionality in line with National Cabinet's expectations.

National Cabinet is therefore requested to:

Agree that the states and territories implement the proposed mandatory Code (including via legislation) in their jurisdictions.

Agree not to legislate in a way that would provide the ability for tenants to unilaterally terminate leases on the grounds of financial distress. The implementation of a mandatory code now renders this unnecessary.

Progress on industry-led Code

On 3 April 2020, National Cabinet made further progress on the issue of commercial tenancies. It agreed to the development of a Code for commercial tenancies, covering retail, commercial and industrial leases, as well as a set of principles that will inform the design of the Code.

While National Cabinet's preference was for an industry-led and owned Code, it nevertheless foreshadowed that in the event that a satisfactory Code was unable to be developed, then states and territories would instead seek to legislate.

Discussions among relevant stakeholders have taken place since National Cabinet's meeting on 3 April 2020, however, stakeholders have been unable to satisfactorily incorporate the principle of proportionality and commit to an appropriate minimum level of rental waiver as part of their proposed Code.

As a result, a proposed mandatory Code has been developed which adopts key elements of the draft code submitted by landlord and tenant representative bodies but which also appropriately reflects the principle of proportionately agreed by National Cabinet.

This proposed Code would be implemented by the states and territories (including via legislation where necessary). Proposed State and territory land tax relief would then be provided to eligible landlords subject to (and abiding by) the Code. Under the Code, landlords must pass on the benefits of this relief to eligible tenants.

Proposed Mandatory Code

The purpose of the proposed mandatory Code is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, in circumstances where the tenant is an eligible business for the purpose of the Commonwealth Government's JobKeeper programme.

Under \$50 million turnover threshold

The proposed mandatory Code will apply to all tenancies (including franchisees and licensees) 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).

The \$50 million annual turnover threshold will be applied in respect of franchises at the franchisee level, and in respect of retail corporate groups at the group level (rather than at the individual retail outlet level).

Proportionality

National Cabinet agreed that there would be a proportionality to rent reductions based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants.

Under the proposed mandatory Code, landlords must offer tenants proportionate waivers and/or deferrals of rent payable 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.

Rental waivers must constitute no less than 50% of the total reduction in rent payable 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.

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.

This approach under the proposed mandatory Code provides a proportionate and measured burden share between the two parties while still allowing tenants and landlords to agree tailored, bespoke and appropriate temporary arrangements that take account of their particular circumstances.

Mediation

Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred (by either party) to the applicable state or territory retail/commercial leasing dispute resolution processes for mediation. Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.

Attachment A – National Cabinet Proposed Mandatory Code of Conduct

NATIONAL CABINET MANDATORY CODE OF CONDUCT

SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

PURPOSE

The purpose of this Code of Conduct (“the Code”) is to impose a set of good faith leasing principles for application to commercial tenancies (including retail, office and industrial) between owners/operators/other landlords and tenants, where the tenant is an eligible business for the purpose of the Commonwealth Government’s JobKeeper programme.

These principles will apply 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.

This 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”).

The \$50 million annual turnover threshold will be applied in respect of franchises at the franchisee level, and in respect of retail corporate groups at the group level (rather than at the individual retail outlet level).

The Parties to this Code concur that during the COVID-19 pandemic period, as defined by the period during which the JobKeeper programme is operational, the principles of this Code should nevertheless apply in spirit to all leasing arrangements for affected businesses, having fair regard to the size and financial structure of those businesses.

Appendix I gives examples of proportionate solutions that may be agreed under this Code, and forms part of the overall Code.

The Code has been developed to enable both a consistent national approach and timely, efficient application given the rapid and severe commercial impact of official responses to the COVID-19 pandemic.

PARTIES TO THE CODE

The Code will be given effect through relevant state and territory legislation. The Code is not intended to supersede such legislation, but aims to complement it during the COVID-19 crisis period.

OVERARCHING PRINCIPLES

The objective of the Code is to share, in a proportionate, measured manner, the financial risk and cashflow impact during the COVID-19 period, whilst seeking to appropriately balance the interests of tenants and landlords.

It is intended that landlords will agree tailored, bespoke and appropriate temporary arrangements for each SME tenant, taking into account their particular circumstances on a case-by-case basis.

The following overarching principles of this Code will apply in guiding such arrangements:

- Landlords and tenants share a common interest in working together, to ensure business continuity, and to facilitate the resumption of normal trading activities at the end of the COVID-19 pandemic during a reasonable recovery period.
- Landlords and tenants will be required to discuss relevant issues, to negotiate appropriate temporary leasing arrangements, and to work towards achieving mutually satisfactory outcomes.
- Landlords and tenants will negotiate in good faith.
- Landlords and tenants will act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code.
- Any agreed arrangements will take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.
- The Parties will assist each other in their respective dealings with other stakeholders including governments, utility companies, and banks/other financial institutions in order to achieve outcomes consistent with the objectives of this Code.
- All premises are different, as are their commercial arrangements; it is therefore not possible to form a collective industry position. All parties recognise the intended application, legal constraints and spirit of the Competition and Consumer Act 2010.

- The Parties will take into account the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.
- All leases must be dealt with on a case-by-case basis, considering factors such as whether the SME tenant has suffered financial hardship due to the COVID-19 pandemic; whether the tenant's lease has expired or is soon to expire; and whether the tenant is in administration or receivership.
- Leases have different structures, different periods of tenure, and different mechanisms for determining rent. Leases may already be in arrears. Leases may already have expired and be in "hold-over." These factors should also be taken into account in formulating any temporary arrangements in line with this Code.
- As the objective of this Code is to mitigate the impact of the COVID-19 pandemic on the tenant, due regard should be given to whether the tenant is in administration or receivership, and the application of the Code modified accordingly.

LEASING PRINCIPLES

In negotiating and enacting appropriate temporary arrangements under this Code, the following leasing principles should be applied as soon as practicable on a case-by-case basis:

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 waivers and/or deferrals (as outlined under "definitions," below) of rent payable 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 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 fulfill 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 items #3 and #4 above and no fees, charges nor punitive interest may be charged on deferrals in items #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 on levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

MEDIATION

Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable state or territory retail/commercial leasing dispute resolution processes for mediation, including Small Business Commissioners/Champions/Ombudsmen where applicable.

Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.

DEFINITIONS

The following definitions are provided for reference in the application of this Code.

1. Financial Stress or Hardship: an individual, business or company's inability to generate sufficient revenue as a direct result of the COVID-19 pandemic (including government-mandated trading restrictions) that causes the tenant to be unable to meet its financial and/or contractual (including retail leasing) commitments. SME tenants which are eligible for the federal government's JobKeeper payment are automatically considered to be in financial distress under this Code.

2. Sufficient and accurate information: this includes information generated from an accounting system, and information provided to and/or received from a financial institution, that impacts the timeliness of the Parties making decisions with regard to the financial stress caused as a direct result of the COVID-19 event.

3. Waiver and/or deferral: any reference to waiver and/or deferral may also be interpreted to include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease), or any other such commercial outcome of agreements reached between the parties. Any amount of reduction provided by a waiver may not be recouped by the Landlord over the term of the lease.

4. Proportionate: the amount of rent relief proportionate to the reduction in trade as a result of the COVID-19 pandemic plus a subsequent reasonable recovery period, consistent with assessments undertaken for eligibility for the Commonwealth's JobKeeper programme.

CODE ADMINISTRATION COMMITTEE

This Code will be supported by state based Industry Code Administration Committees, comprising representatives from relevant industry bodies representing landlord, tenant and SME interests, with an Independent Chair appointed by the relevant State/Territory Government.

Committee members' roles will be to (1) promote awareness of the Code; (2) encourage application of the Code; (3) encourage its application by the broader retail industry; and (4) monitor the operation of the Code.

The Committee should meet at least fortnightly, and may communicate and meet via email, telephone calls, or video conferencing.

No formal minutes will be taken; however, the Committee will document key action items and outcomes of each meeting.

The Committee may invite advisers, upon agreement by all Committee members, to assist on specific issues in the course of discharging their obligations under this section.

COMMENCEMENT/EXPIRY

This Code comes into effect in all states and territories from 3 April 2020 (being the date that National Cabinet agreed to a set of principles to guide the Code to govern commercial tenancies as affected by the COVID-19 pandemic), for an initial effective period of six months. Should the Australian Government fail to declare an end to the COVID-19 pandemic by 30 September 2020, the Parties to this Code will resume negotiations with a view to extending its operational period.

APPENDIX I

EXAMPLES OF THE APPLICATION OF THE PRINCIPLE OF PROPORTIONALITY

The following scenarios are examples only, noting the circumstance of each landlord, SME tenant and lease are different, and are subject to negotiation and agreement in good faith.

Examples of practical variations reflecting the application of the principle of proportionality may include, but are not limited to:

- Qualifying tenants would be provided with cash flow relief in proportion to the loss of turnover they have experienced from the COVID-19 crisis
 - ie. a 60% loss in turnover would result in a guaranteed 60% cash flow relief.
 - At a minimum, half is provided as rent free/rent waiver for the proportion of which the qualifying tenant's revenue has fallen.
- Up to half could be through a deferral of rent, with this to be recouped over at least 24 months in a manner that is negotiated by the parties
 - So if the tenant's revenue has fallen by 100%, then at least 50% of total cash flow relief is rent free/rent waiver and the remainder is a rent deferral. If the qualifying tenant's revenue has fallen by 30%, then at least 15% of total cash flow relief is rent free/rent waiver and the remainder is rent deferral.
 - Care should be taken to ensure that any repayment of the deferred rent does not compromise the ability of the affected SME tenant to recover from the crisis.
- The parties would be free to make an alternative commercial arrangement to this formula if that is their wish.

Attachment B – Principles for Commercial Tenancy Rent Waivers Agreed by National Cabinet

The principles that guide the code will be:

- a) Where it can, rent should continue to be paid, and where there is financial distress as a result of COVID-19 (for example, the tenant is eligible for assistance through the JobKeeper program), tenants and landlords should negotiate a mutually agreed outcome.
- b) There will be a proportionality to rent reductions based on the decline in turnover to ensure that the burden is shared between landlords and tenants.
- c) There will be a prohibition on termination of leases for non-payment of rent (including lockouts and evictions).
- d) There will be a freeze on rent increases (except for turnover leases).
- e) There will be a prohibition on penalties for tenants who stop trading or reduce opening hours.
- f) There will be a prohibition on landlords passing land tax to tenants (if not already legislated).
- g) There will be a prohibition on landlords charging interest on unpaid rent.
- h) There will be a prohibition on landlords from making a claim to a bank guarantee or security deposit for non-payment of rent.
- i) Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord can agree a rent waiver in return for a lease extension)

ITEM 2B. STATE AND TERRITORY COVID-19 RESIDENTIAL AND COMMERCIAL RENTAL SECTOR RESPONSE

Purpose	FOR AGREEMENT
Author	VICTORIA

RECOMMENDATIONS

That the National Cabinet:

1. **Agree** that short-term intervention is required in residential and commercial tenancies to avoid significant disruption to the residential and commercial tenancy markets arising from COVID-19.
2. **Agree** to a common set of principles endorsed by Treasurers to underpin and govern intervention to aid residential and commercial tenancies as follows:
 - a short term, temporary moratorium on eviction for non-payment of rent to be applied across tenancies impacted by severe rental distress due to COVID-19;
 - designing a mechanism (or definition) to determine rental distress;
 - tenants and landlords should be encouraged and incentivised to agree on rent relief or temporary amendments to the lease;
 - the reduction or deferral of rental payments for a defined period for impacted tenants;
 - the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
 - commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by COVID-19
 - landlords and tenants not significantly affected by COVID-19 are expected to honour their lease and rental agreements;
 - cost-sharing or deferral of losses between landlords and tenants, with Commonwealth and state and territory governments to consider mechanisms to provide assistance; and
 - engagement and participation by financial institutions.
3. **Agree** that States and Territories develop and implement appropriate, targeted interventions in the residential and commercial rental markets according to these principles, and that a report back be provided to National Cabinet on implementation progress and any outstanding risk within three weeks.
4. **Agree** the Commonwealth will lead with financial institutions to extend mortgage freezes and deferrals to investors operating rental properties.

SUPPORTING ANALYSIS

COVID-19 will impact housing security and viability of many businesses

Without substantial policy intervention, COVID-19 will severely impact housing security, leading to increased homelessness and higher virus transmission. Most businesses are also severely impacted, with many businesses already closed and others soon to shut down. Commercial rents and payroll comprise the majority of costs for most businesses.

Disruption to residential and commercial tenancy markets will have economy-wide implications

Landlords can be individuals, families, small enterprises and large corporations. Many will have loans that are either directly or indirectly tied to their tenanted properties and will rely on rental income to service mortgages. As such, the disruption of rental income represents a significant risk to the property market and financial system, as was experienced during the Global Financial Crisis in Australia and overseas.

Treasurers have considered residential and commercial tenancy assistance

On 27 March National Cabinet referred to Treasurers the consideration of an appropriate rental assistance scheme with advice to be provided to the National Cabinet as early as 29 March 2020. In response, Treasurers noted the following key objectives:

- maintaining rental affordability for households and businesses most affected by the public response to COVID-19;
- ease of communication to tenants and implementation of the approach; and
- cost-sharing and incorporating the recent announcement of mortgage freezes announced by financial institutions.

Treasurers have endorsed the adoption of principles to underpin government intervention in the rental property market for residential and commercial tenancies.

State and Territories can administer a commercial and residential tenancy assistance scheme according to these nationally consistent principles

Implementing the proposed approach relies upon an authority/ies in each jurisdiction verifying rental distress and identifying an appropriate level of rental discount to be applied. This approach will rely on sharing Commonwealth taxation and social security data with state and territory agencies to assess tenant and landlord eligibility. This process of verification and decision upon an agreed rental discount could also be used by landlords to apply for mortgage relief with their financial institution. The resolution of the liability from non-payment of rent will be a matter for further work by the relevant authorities in each state and territory but could, for example, involve the tenant and landlord sharing in the cost of the repayment of rent over time.

Implementation risks require further consideration

The proposed residential and commercial tenancy schemes will likely require legislative change, which will involve some implementation lead times. Urgent consideration will be required with regard to how best to achieve this, including the potential application of other legal powers to enable immediate implementation. Careful consideration of implementation approaches and risks will also be required to enact the principles outlined in recommendation 2, including appropriate timeframes and approaches for ensuring cooperation by tenants, landlords and financial institutions. These implementation matters, including the need for any further government measures, such as potential models for cost-sharing between governments, tenants, landlords and financial institutions, may also require further consideration by National Cabinet.



Australian, State and Territory
Governments

National Cabinet for Australia's Coronavirus Response Submission

Title	Commercial leases and land tax
Sponsoring Ministers	Board of Treasurers

Summary

Proposed Action

That the National Coronavirus Cabinet **agree** to a revised set of commercial leasing principles and **note** temporary land tax relief measures to be implemented by each State and Territory to help protect tenants experiencing financial distress due to the COVID-19 pandemic.

Key reasons

Agreement to the recommendations of this submission will enable States and Territories to legislate commercial tenancy relief measures and commit to a uniform approach to temporarily reducing the land tax burden for tenants affected by the COVID-19 pandemic.

Key risks and sensitivities

Implementation of the agreed commercial leasing principles will require States and Territories to make legislative amendments, which may be challenging given Parliament sittings have been postponed in some jurisdictions and this could potentially result in different dates of commencement across Australia.

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1 Proposed Actions

The Board of Treasurers recommend the National Coronavirus Cabinet:

1. **Note** that:

- (a) States and Territories have agreed a set of leasing principles for the protection of commercial tenants experiencing financial distress because of the COVID-19 pandemic.
- (b) These protections will be legislated by States and Territories for retail leases, which are the only regulated commercial leases.
- (c) s47C, s47E(d)

2. **Agree** that the leasing principles will be as follows:

- (a) Where it can, rent should continue to be paid, and where there is financial distress as a result of COVID-19 (for example, equivalent to a reduction in turnover of 30 per cent or more in a relevant month or three months relative to their turnover a year earlier), tenants and landlords should negotiate a mutually agreed outcome
- (b) There will be a prohibition on termination of leases for non-payment of rent (lockouts and eviction)
- (c) There will be a freeze on rent increases (except for turnover leases)
- (d) There will be a prohibition on penalties for tenants who stop trading or reduce opening hours
- (e) There will be a prohibition on landlords passing land tax to tenants (if not already legislated)
- (f) There will be a prohibition on landlords charging interest on unpaid rent
- (g) There will be a prohibition on landlords from making a claim to a bank guarantee or security deposit for non-payment of rent
- (h) Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord could agree a rent waiver in return for a lease extension).

3. **Agree** that the leasing principles will not include the ability for a tenant to terminate a lease for financial distress, noting:

- (a) s47C, s47E(d)

- (b) Mass termination of leases, which extend for many years, would be enormously economically disruptive and value destructive and inconsistent with the

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temporary nature of the other principles and the objective of a swift economic recovery.

4. **Note** that:

- (a) States and Territories have agreed to provide the equivalent of at least a three month land tax waiver and three month land tax deferral on application for eligible landowners, with jurisdictions to continue to monitor the situation.
- (b) This will apply to all properties within a portfolio that meet the criteria, irrespective of valuation or land use (i.e., commercial and residential).

5. **Note** that the agreed eligibility criteria for land tax relief are as follows (noting there will be some jurisdictional variation in implementation):

- (a) The landowner rents all or part of a property to a tenant/s OR all or part of a property is currently available for lease; AND
- (b) At least one tenant's ability to pay their normal rent OR the landowner's ability to secure a tenant is affected by the pandemic; AND
- (c) The landowner provides rent relief to affected tenant/s at least commensurate with the amount of the land tax reduction OR if the property is unable to be leased, the landowner requires land tax relief to meet financial obligations (such as debt repayments); AND
- (d) The landowner will comply with the leasing principles (listed above), even if the relevant lease is not regulated; AND
- (e) In relation to single properties that have multiple tenants (for example, mixed use developments or shopping centres) it is noted that some tenants will be impacted and others will not. For administrative simplicity, if the criteria are met then the whole property is eligible, with the relief to be used to assist affected tenants.

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Detail of Proposal

Commercial tenancy relief

- 1.1 On 29 March 2020, National Cabinet endorsed a set of principles for commercial leases, which were:
- a) a short term, temporary moratorium on eviction for non-payment of rent to be applied across commercial tenancies impacted by severe rental distress due to coronavirus;
 - b) tenants and landlords are encouraged to agree on rent relief or temporary amendments to the lease;
 - c) the reduction or waiver of rental payment for a defined period for impacted tenants;
 - d) the ability for tenants to terminate leases and/or seek mediation or conciliation on the grounds of financial distress;
 - e) commercial property owners should ensure that any benefits received in respect of their properties should also benefit their tenants in proportion to the economic impact caused by coronavirus;
 - f) landlords and tenants not significantly affected by coronavirus are expected to honour their lease and rental agreements; and
 - g) cost-sharing or deferral of losses between landlords and tenants, with Commonwealth, state and territory governments, local government and financial institutions to consider mechanisms to provide assistance.
- 1.2 Following close consultation with stakeholders, these principles have been refined by States and Territories as presented at Recommendation 2.
6. As outlined at Recommendation 3, contrary to the above principles endorsed on 29 March 2020, it is now recommended that National Cabinet not include a principle that gives the ability for a tenant to terminate a lease for financial distress.
7. s47C, s47E(d), 47G
- Furthermore, mass termination of leases, which extend for many years, would be enormously economically disruptive and value destructive and inconsistent with the temporary nature of the other principles and the objective of a swift economic recovery.
- 1.3 The revised leasing principles will provide greater certainty to landlords and tenants at this challenging time but will also allow for mutually agreed outcomes to be negotiated

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and agreed at the tenancy level. This is important given the significant number of leases that exist, and the need to maintain the lessor – lessee relationship.

- 1.4 Agreeing to these revised leasing principles will allow States and Territories to harmonise required legislative amendments for retail leases (which are currently regulated) and applied to other leases through a new industry-led code of conduct.

Land tax relief

- 1.5 National Cabinet should note the agreed position of States and Territories to provide the equivalent of at least a three-month land tax waiver and three-month land tax deferral on application for eligible landowners.
- 1.6 This proposal represents a significant financial contribution from States and Territories towards relieving tenants affected by COVID-19 in the form of forgone and deferred revenue.
- 1.7 Once implemented, it will provide targeted relief to tenants affected by COVID-19, regardless of whether the land use is for commercial or residential purposes.

2 Risks and sensitivities

Form of implementation

- 2.1 While this submission provides for nationally consistent commercial leasing principles, detailed implementation will vary by jurisdiction. This is due to different land tax regimes existing across jurisdictions, which include variations in the scope of retail leases regulated.

Timing of implementation for legislative amendments

- 2.2 Due to the impact of COVID-19 on parliamentary sitting schedules, achieving a uniform date of implementation may prove challenging unless retrospective application is considered.

3 Impacts

- 3.1 Agreement to the recommendations of this submission will provide a significant benefit to the business and people of Australia that are, or soon will be, financially affected by the unprecedented impact of COVID-19.
- 3.2 The adoption of the revised commercial leasing principles will provide greater certainty to landlords and tenants at this challenging time. Implementation of the land tax relief measures will also provide much needed rent relief to affected tenants.

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