

# Accommodation Solutions

## Commercial and Retail Leases Industry Code of Conduct Update

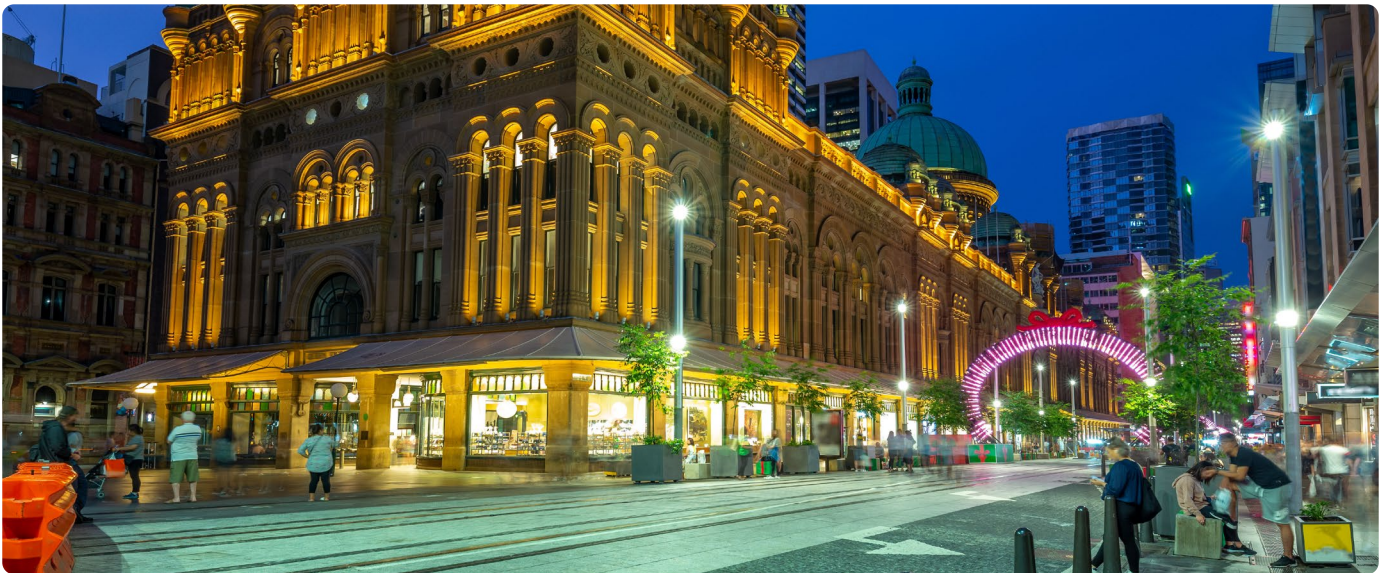
April 2020  
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**CHARTER.**  
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Charter's Accommodation Solutions team are specialists in all commercial and retail leasing matters, assisting both Tenants and Landlords in negotiating their lease agreements for over 20+ years.

Our Accommodation Solutions team operates from Charter's Melbourne and Sydney offices, with experience and coverage across Australia for a broad range of clients, from "mum and dad" operated small businesses, to large corporates and multinationals with 1,000+ stores across the country.

We realise the importance of all parties fulfilling their obligations under the COVID-19 Code of Conduct, with a thorough understanding of all principals being crucial to ensuring a fair and reasonable outcome is achieved. At this time Charter's Accommodation Solutions team makes itself available to assist with any advice and consultancy your business may need to navigate you through the COVID-19 pandemic.



On 7 April 2020, after meeting with the National Cabinet, the Prime Minister announced the inauguration of a Mandatory Industry Code of Conduct for Commercial and Retail leases across Australia.

The Media Statement from the Prime Minister's Office outlined the following leasing principals which should be applied as soon as practicable :

*"1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).*

*2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.*

*3. Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals (as outlined under "definitions," below) of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.*

*4. Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle #3 above over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement.*

*Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement.*

*5. Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.*

*6. Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease.*

*7. A landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other case-by-case deferral of loan repayments offered to other Landlords, with the tenant in a proportionate manner.*

8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances.

9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period.

10. No fees, interest or other charges should be applied with respect to rent waived in principles #3 and #4 above and no fees, charges nor punitive interest may be charged on deferrals in principles #3, #4 and #5 above.

11. Landlords must not draw on a tenant's security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19 pandemic and/or a reasonable subsequent recovery period.

12. The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period outlined in item #2 above. This is intended to provide the tenant additional time to trade, on existing lease

terms, during the recovery period after the COVID-19 pandemic concludes.

13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19

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.”

A full copy of the code including information on the overarching principals, binding mediation and relevant definitions can be found via the link below.

[National Cabinet Mandatory Code of Conduct.](#)

For a better understanding of the Commercial and Retail Leases Industry Code of Conduct contact one of our experts below.

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