

Premier's Circular

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TITLE

RENT RELIEF FOR SMALL BUSINESS AND NOT-FOR-PROFIT ENTITIES
AFFECTED BY COVID-19

POLICY

The Government Premises (Small Business and Not for Profit) Rent Relief Measures (**Rent Relief Measures**) assists in addressing financial hardship being experienced by small businesses and not-for-profit entities where those small businesses and not-for-profit entities are also:

- (a) a lessee in a lessor-lessee relationship; or
- (b) a licensee in a licensor-licensee relationship,

with a PSMA Entity¹ in respect of commercial premises which they use for the purposes of operating their small business or not-for-profit business.

The Rent Relief Measures aim to provide rent relief to the above categories of people where certain conditions are met. The Rent Relief Measures, including the terms and conditions to which they are subject, are included at **Attachment A**.

It is expected that all PSMA entities will implement the Rent Relief Measures notwithstanding any existing contractual entitlement they may have to the payment of rent.

It is intended that the policy intent of this Circular will extend to certain Government Trading Enterprises as well. The implementation approach for GTEs will be managed separately and where necessary, the implementation of the Rent Relief Measures will be supported by Ministerial direction.

Implementing agencies can seek assistance from their nominated Treasury analyst at the Department of Treasury in managing the implementation and impacts of the Rent Relief Measures. Agencies should ensure that they comply with any obligations under the *Financial Management Act 2006* in implementing these measures, including in relation to write-offs should the waiver of rent in any particular instance constitute a write-off.

¹ A PSMA entity means any entity to whom the Public Sector Management Act 1994 applies other than a Schedule 1 entity.

BACKGROUND

On 11 March 2020, the World Health Organization declared the human coronavirus disease, known as COVID-19, a pandemic.

Each of the Federal, State and Territory Governments of Australia have declared states of emergency in respect of the pandemic. Western Australia has declared both a state of emergency and a public health state of emergency.

In response to the states of emergency in effect across Australia, all Australian Governments have taken measures to minimise the spread of the disease. Governments have also announced a range of measures to provide relief to families and small businesses, and help support the State's economy to respond to COVID-19.

The Rent Relief Measures are being implemented as one aspect of a package of relief measures to help manage the effect of the COVID-19 pandemic on the Western Australian community. The relevant legislation which supports the broader package of commercial tenancy relief is the *Commercial Tenancies (COVID-19 Response) Bill 2020*.

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PREMIER

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Other relevant Circulars:	NA
Circular/s replaced by this Circular:	NA

ATTACHMENT A

GOVERNMENT PREMISES (SMALL BUSINESS AND NOT FOR PROFIT) RENT RELIEF MEASURES

Purpose and Scope

1. This document sets out the Government Premises (Small Business and not for Profit) Rent Relief Measures (**Rent Relief Measures**).
2. The Rent Relief Measures are intended as part of a package of measures to be implemented to assist small businesses and not-for-profit tenants of a landlord to manage the financial impacts of COVID-19. They are intended to operate with any legislative measures that are put in place for the benefit of small business and not-for-profit entities.
3. These measures must be read subject to any written or other law that operates to confer a right on a tenant of a landlord in the circumstances set out herein, or which otherwise affects the implementation of the Rent Relief Measures.

Definitions

4. For the purposes of the Rent Relief Measures, the following definitions apply:
 - (a) **affected lease** means:
 - (i) a lease from a landlord where the tenant owns and operate a small business and uses the premises that are the subject of the lease for the purposes of carrying on that business; or
 - (ii) a lease from a landlord where the tenant is a not-for-profit and uses the premises for carrying on the business of that not-for-profit;
 - (b) **effective date** means 30 March 2020.
 - (c) **Government Organisation** means a department or agency as defined in the *Public Sector Management Act 1994*;
 - (d) **landlord** means the person who, under a lease, grants the tenant the right to occupy the premises or the land that that are the subject of the lease and who is also a Government Organisation.
 - (e) **lease** means any lease, sublease, licence or other agreement under which a person grants a right to another person to occupy premises whether or not that right is a right of exclusive occupation and whether or not the lease, sublease, licence or other agreement is in writing.
 - (f) **not-for-profit** means an entity operated for a purpose other than for profit and incorporated under the *Associations Incorporation Act 2015* (WA);
 - (h) **rent** means a payment characterised as fee that is payable in connection with the use or occupation or premises;
 - (i) **secondary tenant** means a tenant to whom the tenant under an affected lease has granted a lease over the whole or any part of the premises the subject of the affected lease;
 - (j) **small business** has the meaning given to that term in section 3 of the *Small Business Development Corporation Act 1983* (WA);

- (k) **tenant** means a small business or not-for-profit that is also the person who, under a lease, is entitled to occupy the land or premises that are the subject of the lease; and
- (l) **waiver period** means 6 months from the effective date or such other longer or shorter period as determined by the Premier.

Measures to be Implemented in Relation Affected Leases

5. Subject to paragraphs 6, 7 and 8, a landlord must implement, and do all things necessary to implement, the following measures in relation to a tenant under an affected lease, notwithstanding any enforceable contractual entitlement to the payment of rent:
 - (a) a landlord must waive all rent payable under the lease during the waiver period;
 - (b) where the tenant has paid rent in advance, the landlord must still effect the waiver of rent referred to in paragraph (a) and may do so by:
 - (i) deferring the waiver period so as to take effect as if the effective date was the last date until which the rent has been paid in advance; or
 - (ii) through a reduction in some other amount payable during the waiver period under the lease up to the value of any rent that has been paid for that same period;
 - (iii) by some other means agreed between the landlord and the tenant; and
 - (c) the landlord must not exercise any right, or take any other action, to terminate an affected lease for non-payment of Rent during the Waiver Period, provided that nothing in these Rent Relief Measures should be taken to prevent the landlord from exercising a right which accrued prior to 16 March 2020.

Conditions to be Satisfied

6. A landlord is only required to implement the measures set out in paragraph 5 where the tenant of the affected lease is in compliance with the lease and continues to be in compliance during the waiver period or during any period referred to in paragraph 5(b)(i) (where applicable).
7. Notwithstanding paragraph 6, where the landlord is satisfied that:
 - (a) any non-compliance with an affected lease is of a trivial and not material nature; or
 - (b) any non-compliance with an affected lease is the direct result of COVID-19; or
 - (c) a failure to extend the Rent Relief Measures will result in undue economic hardship to the tenant under the affected lease,

the landlord may extend the Rent Relief Measures to the particular tenant under the affected lease.
8. If the tenant of an affected lease has a lease with a secondary tenant, the landlord is only required to implement the Rent Relief Measures in circumstances where the

tenant provides an enforceable undertaking to the landlord to pass on the benefit of any waiver of rent to the secondary tenant in an amount proportionate to the share of the rent for the premises that the tenant of the affected lease receives from that secondary tenant. In circumstances where the tenant agrees to pass on the benefit but does not do so, then the landlord may exercise any rights that accrue to the landlord as a matter of law and will not be required to implement any Rent Relief Measures in relation to an affected lease.