



Premier's Circular

Number:	2022/01
Issue Date:	11/03/2022
Review Date:	30/09/2022

TITLE

TENANT RENTAL CREDIT SCHEME FOR SMALL BUSINESS AND NOT-FOR-PROFIT TENANTS OF GOVERNMENT-OWNED BUILDINGS

POLICY

The Tenant Rental Credit Scheme for Small Business and Not-for-profit Tenants of Government-owned Buildings (**Scheme**) 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;
- b) a sub-lessee (secondary tenant) under a lessor-lessee relationship; or
- c) 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 Scheme aims to provide rent relief to the above categories of organisations where certain conditions are met. The Scheme, including the terms and conditions to which it is subject, is included at **Attachment A**.

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

It is intended that the policy intent of this Circular will also extend to certain Government Trading Enterprises (GTEs). The implementation approach for GTEs will be managed separately and where necessary, the implementation of the Scheme will be supported by Ministerial direction.

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

Implementing agencies can seek supplementary funding later in the 2021-22 financial year for the cost of providing rental assistance under this initiative. Agencies should ensure that they comply with any obligations under the *Financial Management Act 2006* in implementing these measures.

PSMA entities are required to liaise with the Small Business Development Corporation (SBDC) regarding the delivery and the assessment of tenant applications. SBDC will assist PSMA entities by undertaking assessments.

BACKGROUND

On 11 March 2020, the World Health Organisation 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 Scheme is being implemented as one aspect of the Level 1 COVID-19 Business Assistance Package announced in February 2022 to further help manage the impact of the COVID-19 pandemic and associated public health and social measures on the Western Australian community.

Mark McGowan MLA
PREMIER

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Other relevant Circulars:	N/A
Circular/s replaced by this Circular:	N/A

ATTACHMENT A

TENANT RENTAL CREDIT SCHEME FOR SMALL BUSINESS AND NOT-FOR-PROFIT TENANTS OF GOVERNMENT-OWNED BUILDINGS

Purpose and Scope

1. This document sets out the Tenant Rental Credit Scheme for Small Business and Not-for-profit Tenants of Government-owned Buildings (**Scheme**).

The Scheme is part of the Level 1 COVID-19 Business Assistance Package being implemented to assist small businesses and not-for-profit tenants of government-owned buildings to manage the financial impacts of COVID-19.

2. This document 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 Scheme.

Definitions

3. For the purposes of the Scheme, the following definitions apply:

(a) **affected lease** means:

- (i) a lease from a landlord where the tenant or secondary tenant owns and operates 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 or secondary tenant is a not-for-profit and uses the premises for carrying on the business of that not-for-profit.

(b) **effective date** means 24 February 2022.

(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 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).

(g) **rent** means a payment characterised as fee that is payable in connection with the use or occupation of premises.

- (h) **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.
- (i) **small business** has the meaning given to that term in section 3 of the *Small Business Development Corporation Act 1983 (WA)* with eligibility for this program requiring businesses to have an annual revenue of more than \$50,000 and equal to or less than \$4 million annual payroll.
- (j) **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 or sub-lease; and
- (k) **eligible assistance period** relates to the 1 January to the 30 April 2022 or such other longer or shorter period as determined by the Premier.

Measures to be Implemented in Relation to Affected Leases

- 4. Subject to paragraphs 5 and 6 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 provide rent relief under the lease or provide a refund in the case of a sub-lease of \$6,000 for tenants which are small businesses, as defined above, who have experienced a reduction in turnover of at least 30% for any four-week consecutive time-frame between 1 January 2022 to 30 April 2022, compared to the equivalent period in 2021, or an alternative period if:
 - (i) the businesses did not operate in that period in 2021, or
 - (ii) it provides an inaccurate presentation of a business.
 - (b) where the eligible tenant has paid rent in advance, the landlord must still affect the assistance of rent referred to in paragraph (a) and may do so by:
 - (i) deferring the assistance period 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 assistance 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) A landlord must contact lessees regarding the rent relief program and, where sub-leasing occurs, require the tenant to inform their sub-lessees of the ability to apply for assistance to be funded by the landlord.

Conditions to be Satisfied

5. A landlord is only required to implement the measures set out in paragraph 4 where the tenant of the affected lease is compliant with the lease and continues to be compliant during the assistance period or during any period referred to in paragraph 4(b)(i) (where applicable).
6. Notwithstanding paragraph 5, 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 Scheme will result in undue economic hardship to the tenant under the affected lease,

the landlord may extend the Scheme to the particular tenant under the affected lease.