

Authorised Version No. 002
COVID-19 Omnibus (Emergency Measures)
(Commercial Leases and Licences)
Regulations 2020

S.R. No. 31/2020

Authorised Version incorporating amendments as at
29 September 2020

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Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

- (a) to implement temporary measures to apply to tenants and landlords under certain eligible leases to mitigate the effect of measures taken in response to the COVID-19 pandemic; and
- (b) to implement mechanisms to resolve disputes concerning eligible leases.

2 Authorising provision

These Regulations are made under section 15 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

3 Commencement

These Regulations are taken to have come into operation on 29 March 2020.

4 Definitions

In these Regulations—

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and
Licences) Regulations 2020
S.R. No. 31/2020
Part 1—Preliminary

Reg. 4 def. of
*actual decline
in turnover
test* inserted
by S.R. No.
107/2020
reg. 4(1).

actual decline in turnover test has the same
meaning as in section 4 of the jobkeeper
rules;

Reg. 4 def. of
binding order
inserted by
S.R. No.
107/2020
reg. 4(1).

binding order has the same meaning as in
section 15(1)(na) of the Act;

Reg. 4 def. of
*business
activity
statement*
inserted by
S.R. No.
107/2020
reg. 4(1).

business activity statement means a statement, in
the form approved by the Commissioner of
Taxation under section 388-50 of Schedule 1
to the Taxation Administration Act 1953 of
the Commonwealth, that sets out the
liabilities, obligations and entitlements under
a BAS provision (within the meaning of the
Income Tax Assessment Act 1997 of the
Commonwealth) of a business;

Reg. 4 def. of
business day
inserted by
S.R. No.
107/2020
reg. 4(1).

business day means a day that is not—
(a) a Saturday or a Sunday; or
(b) a day that is appointed as a public
holiday or a public half-holiday
throughout the whole of Victoria
under the **Public Holidays Act 1993**;

Commissioner of State Revenue means the
Commissioner within the meaning of the
Taxation Administration Act 1997;

Reg. 4 def. of
*Commis-
sioner of
Taxation*
inserted by
S.R. No.
107/2020
reg. 4(1).

Commissioner of Taxation means the
Commissioner within the meaning of the
Taxation Administration Act 1953 of the
Commonwealth;

dispute notice—see regulation 20(2A);

Reg. 4 def. of
dispute notice
inserted by
S.R. No.
107/2020
reg. 4(1).

eligible lease dispute—see regulation 20;

Note

See also regulation 21S, under which eligible lease disputes can have matters severed, or be divided into separate matters, each of which is to be taken to be a distinct *eligible lease dispute*.

Reg. 4 def. of
eligible lease dispute
amended by
S.R. No.
107/2020
reg. 4(2).

jobkeeper payment has the same meaning as in section 4 of the jobkeeper rules;

Reg. 4 def. of
jobkeeper payment
inserted by
S.R. No.
107/2020
reg. 4(1).

jobkeeper rules means the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 of the Commonwealth;

Reg. 4 def. of
jobkeeper rules inserted
by S.R. No.
107/2020
reg. 4(1).

outgoings means a landlord's outgoings on account of any of the following—

- (a) the expenses attributable to the operation, maintenance or repair of—
 - (i) the building or area in which the premises are located or any other building or area owned by a landlord and used in association with the building or area in which the premises are located; or
 - (ii) in the case of premises in a retail shopping centre, any building in the centre or any areas used in association with a building in the centre;

- (b) rates, taxes, levies, premiums or charges payable by a landlord because a landlord is—
 - (i) the owner or occupier of a building or area referred to in paragraph (a) or of the land on which such a building is erected or such area is located; or
 - (ii) the supplier of a taxable supply, within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth, in respect of any such building, area or land;

Reg. 4 def. of
*practising
accountant*
inserted by
S.R. No.
107/2020
reg. 4(1).

practising accountant means a person who—

- (a) is registered as a company auditor by the Australian Securities and Investments Commission; or
- (b) is a Member of CPA Australia or Chartered Accountants Australia and New Zealand; or
- (c) has attained the status of Member or Fellow of either the Institute of Public Accountants or the Association of Taxation and Management Accountants; or
- (d) has attained the status of Fellow of the National Tax & Accountants' Association Limited;

premises means the premises under an eligible lease;

regulation 20A certificate—see regulation 20A;

Reg. 4 def. of
*regulation
20A certificate*
inserted by
S.R. No.
107/2020
reg. 4(1).

relevant period means the period—

Reg. 4 def. of
*relevant
period*
amended by
S.R. No.
107/2020
reg. 4(3).

- (a) commencing on 29 March 2020; and
- (b) ending on 31 December 2020;

rent, in relation to an eligible lease that is a commercial licence, includes the licence fee payable under that licence;

rent relief means any form of relief provided to a tenant in respect of the obligation under an eligible lease to pay rent, including a specified rent relief or a reduction or remission of rent;

Reg. 4 def. of
rent relief
amended by
S.R. No.
107/2020
reg. 4(4).

security means anything provided by a tenant or any other person securing the performance of a tenant's obligations under an eligible lease, including a bond, security deposit, indemnity or guarantee;

SME entity has the same meaning as in section 4 of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 of the Commonwealth;

Reg. 4 def. of
SME entity
inserted by
S.R. No.
107/2020
reg. 4(1).

the Act means the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

turnover test period has the same meaning as in section 4 of the jobkeeper rules;

Reg. 4 def. of
*turnover test
period*
inserted by
S.R. No.
107/2020
reg. 4(1).

Reg. 4A
inserted by
S.R. No.
107/2020
reg. 5.

4A Prescribed eligible lease

For the purposes of section 13(1)(a) of the Act, an eligible lease is a retail lease or a non-retail commercial lease or licence under which the tenant—

- (a) is an SME entity; and
- (b) is an entity entitled under section 6, 11 or 12A of the jobkeeper rules to a jobkeeper payment.

Reg. 5
amended by
S.R. No.
107/2020
reg. 6 (ILA
s. 39B(2)).

5 Prescribed turnover

(1) For the purposes of the definition of *turnover* in section 12 of the Act, the things set out in section 5(2)(a) to (g) of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020 of the Commonwealth earned or received by an entity in the most recent financial year are prescribed as turnover.

(2) To avoid doubt, for the purposes of the definition of *turnover* in section 12 of the Act, a coronavirus economic response payment is not turnover.

Reg. 5(2)
inserted by
S.R. No.
107/2020
reg. 6.

(3) In this regulation—

coronavirus economic response payment has the same meaning as in section 6 of the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 of the Commonwealth.

Reg. 5(3)
inserted by
S.R. No.
107/2020
reg. 6.

6 Prescribed excluded classes of lease

For the purposes of section 13(2) of the Act, an eligible lease does not include a retail lease or a non-retail commercial lease or licence under which the premises may be used wholly or

predominantly for any of the following activities—

- (a) agricultural, pastoral, horticultural or apicultural activities;
- (b) poultry farming, dairy farming, aquaculture, tree-farming or any business that consists of the cultivation of soils, the gathering of crops or rearing of livestock;
- (c) grazing, including agistment;
- (d) any activity prescribed for the purposes of paragraph (c) of the definition of *farming operation* in section 3 of the **Farm Debt Mediation Act 2011**.

7 Prescribed group, relationship or connection

- (1) For the purposes of section 13(3)(a) of the Act—
 - (a) a prescribed group is a tenant that is connected, within the meaning of section 328–125 of the Income Tax Assessment Act 1997 of the Commonwealth, with another entity or other entities; and
 - (b) \$50 million is the prescribed amount.
- (2) For the purposes of section 13(3)(b) of the Act—
 - (a) there is a prescribed relationship or connection between a tenant and another entity or other entities if the entity is an affiliate, or the entities are affiliates, within the meaning of section 328–130 of the Income Tax Assessment Act 1997 of the Commonwealth of the tenant; and
 - (b) \$50 million is the prescribed amount.

Part 2—General obligation on landlords and tenants

8 Landlords and tenants must work cooperatively

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord and tenant under an eligible lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which these Regulations apply.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

Part 3—Rent, outgoings and other expenses

9 Non-payment of rent or outgoings during relevant period

Reg. 9
(Heading)
amended by
S.R. No.
107/2020
reg. 7(1).

- (1) A tenant under an eligible lease is not in breach of any provision of the eligible lease that relates to payment of rent or outgoings if they do not pay the amount of rent or outgoings required to be paid under the eligible lease during the relevant period and only if they—

Reg. 9(1)
amended by
S.R. No.
107/2020
reg. 7(2)
(a)–(c).

- (a) comply with regulation 10(1) to (5) during the relevant period; or

Note

A tenant under an eligible lease will also need to comply with regulation 10(1) to (5) during the relevant period every time they request rent relief in the circumstances provided for under regulation 11.

- (b) during the relevant period, pay an amount of rent or outgoings in accordance with—

Reg. 9(1)(b)
amended by
S.R. No.
107/2020
reg. 7(2)(d).

- (i) any variation to the eligible lease mentioned in regulation 10(6)(a); or
(ii) any other agreement mentioned in regulation 10(6)(b).

Note

An eligible lease has effect subject to subregulation (1)—see section 17(1) of the Act.

- (2) A landlord under an eligible lease must not evict or attempt to evict a tenant under the eligible lease because of non-payment of rent or outgoings if subregulation (1) applies.

Reg. 9(2)
amended by
S.R. No.
107/2020
reg. 7(3).

Penalty: 20 penalty units.

Reg. 9(3)
amended by
S.R. No.
107/2020
reg. 7(4).

- (3) A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease because of non-payment of rent or outgoings if subregulation (1) applies.

Penalty: 20 penalty units.

Reg. 9(4)
amended by
S.R. No.
107/2020
reg. 7(5).

- (4) A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating to the non-payment of rent under an eligible lease by a tenant under the eligible lease because of non-payment of rent or outgoings if subregulation (1) applies.

Penalty: 20 penalty units.

10 Rent relief

- (1) A tenant under an eligible lease may request rent relief from the landlord under the eligible lease.
- (2) A request under subregulation (1) must be in writing and be accompanied by—

Reg. 10(2)(a)
substituted by
S.R. No.
107/2020
reg. 8(1)(a).

- (a) a statement from the tenant—

- (i) that the tenant's lease is an eligible lease; and
- (ii) that the lease is not excluded from the operation of these Regulations under section 13(3) of the Act; and
- (iii) setting out the tenant's decline in turnover that is associated with the premises (and no other premises); and

- (b) information that evidences that the tenant—

Reg. 10
(2)(b)(ii)
substituted by
S.R. No.
107/2020
reg. 8(1)(b).

- (i) is an SME entity; and
- (ii) is an entity entitled under section 6, 11 or 12A of the jobkeeper rules to a jobkeeper payment, including—

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- (A) the receipt number issued by the Commissioner of Taxation when the tenant elected to participate in the jobkeeper scheme; and
- (B) a copy of the tenant's most recent notice under the jobkeeper rules to the Commissioner of Taxation;
- (c) information that evidences the tenant's stated decline in turnover, including at least one of the following—
 - (i) extracts from the tenant's accounting records;
 - (ii) the tenant's business activity statements relating to the relevant turnover test period;
 - (iii) statements issued by an ADI in respect of the tenant's account;
 - (iv) a statement prepared by a practising accountant.

Reg. 10(2)(c)
inserted by
S.R. No.
107/2020
reg. 8(1)(c).

- (2A) For the purposes of subregulation (2)(a)(iii), the tenant's decline in turnover must be—
 - (a) expressed as a whole percentage; and
 - (b) calculated consistently with the actual decline in turnover test applying to the tenant relating to the most recent turnover test period applying to the tenant.

Reg. 10(2A)
inserted by
S.R. No.
107/2020
reg. 8(2).

Note

Actual decline in turnover test and turnover test period are defined in regulation 4.

- (3) On receipt of a tenant's request under subregulation (1) which conforms with subregulation (2), a landlord must offer rent relief to the tenant under an eligible lease within—
 - (a) 14 days after receiving that request; or

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(b) a different time frame as agreed between the landlord and the tenant in writing.

(4) A landlord's offer of rent relief under subregulation (3) must be based on all the circumstances of the eligible lease and—

Reg. 10(4)(a)
amended by
S.R. No.
107/2020
reg. 8(3)(a).

(a) relate to up to 100% of the rent payable under the eligible lease during the period starting on the date of the tenant's request under subregulation (1) and ending on 31 December 2020; and

(b) provide that no less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless a landlord and a tenant otherwise agree in writing; and

Reg. 10(4)(ba)
inserted by
S.R. No.
107/2020
reg. 8(3)(b).

(ba) be, at a minimum, proportional to the decline in the tenant's turnover associated with the premises consistent with the requirements mentioned in subregulation (2)(a)(iii); and

Reg. 10(4)(c)
amended by
S.R. No.
107/2020
reg. 8(3)(c).

(c) apply to the period starting on the date of the tenant's request under subregulation (1) and ending on 31 December 2020; and

(d) take into account—

Reg. 10(4)(d)(i)
revoked by
S.R. No.
107/2020
reg. 8(3)(d).

* * * * *

(ii) any waiver given pursuant to regulation 14(2); and

(iii) whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil the tenant's ongoing obligations under the eligible lease, including the payment of rent; and

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Licences) Regulations 2020
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* * * * *

Reg. 10
(4)(d)(iv)
revoked by
S.R. No.
107/2020
reg. 8(3)(d).

(v) any reduction to any outgoings charged,
imposed or levied in relation to the
premises.

(4A) To avoid doubt, if the rent charged under an
eligible lease is inclusive of outgoings chargeable
to the tenant with respect to the premises, the
landlord must offer rent relief under subregulation
(4) with respect to the rent payable inclusive of
outgoings.

Reg. 10(4A)
inserted by
S.R. No.
107/2020
reg. 8(4).

(5) Following receipt of a landlord's offer by a tenant,
the tenant and the landlord must negotiate in good
faith with a view to agreeing on the rent relief to
apply during the period starting on the date of the
tenant's request under subregulation (1) and
ending on 31 December 2020.

Reg. 10(5)
amended by
S.R. No.
107/2020
reg. 8(5).

(6) Rent relief under this regulation may be given
effect by the landlord and tenant by—
(a) a variation to the eligible lease; or
(b) any other agreement between them that gives
effect to the rent relief, either directly or
indirectly.

Notes

- 1 An eligible lease has effect subject to this regulation—see section 17(1) of the Act.
- 2 If any part of the rent payable under an eligible lease has been waived under a variation to the eligible lease or under another agreement between the landlord and tenant that gives effect to the rent relief, either directly or indirectly, a landlord will be bound by that variation or agreement and will not be able to subsequently make any claim for payment of the waived part of the rent.

Reg. 11
substituted by
S.R. No.
107/2020
reg. 9.

11 Subsequent rent relief

- (1) This regulation applies if a variation to an eligible lease has been made or an agreement has been reached as mentioned in regulation 10(6) and—
 - (a) subsequently, the financial circumstances of a tenant under the eligible lease materially change; or
 - (b) the variation or agreement—
 - (i) was made prior to the commencement of regulation 10(4)(ba); and
 - (ii) does not comply with regulation 10(4)(ba); or
 - (c) the specified rent relief does not apply to the whole of the period starting on the date of the tenant's request under regulation 10(1) and ending on 31 December 2020.
- (2) The tenant may make a further request to the landlord under that lease for rent relief under regulation 10.
- (3) The landlord and the tenant must follow the process set out in regulation 10 in relation to that request.

Note

An eligible lease has effect subject to this regulation—see section 17(1) of the Act.

12 Prohibition on rent increases

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord under an eligible lease must not increase the rent payable under the lease at any time during the relevant period, unless the landlord and the tenant under the eligible lease agree in writing that this regulation does not apply to their eligible lease.

- (3) Subregulation (2) does not apply to a retail lease to the extent that it provides for rent to be determined by reference to the volume of trade of a tenant's business.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

13 Extension of the term

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) If the payment of any rent is deferred by variation of an eligible lease or an agreement mentioned under regulation 10(6), the landlord under the eligible lease must offer the tenant under the eligible lease an extension to the term of their eligible lease on the same terms and conditions that applied under the eligible lease before the commencement of these Regulations.
- (3) The extension offered under subregulation (2) must be equivalent to the period for which rent is deferred, unless a landlord and a tenant agree in writing that this regulation does not apply to their eligible lease.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

14 Recovery of outgoings or expenses

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord under an eligible lease must consider waiving recovery of any outgoing or other expense payable by a tenant under the eligible lease for any part of the relevant period that the

tenant is not able to operate their business at the premises.

- (3) If a tenant under an eligible lease is not able to operate their business at the premises for any part of the relevant period, the landlord may cease to provide, or reduce provision of, any service at the premises—
 - (a) as is reasonable in the circumstances; and
 - (b) in accordance with any reasonable request of the tenant.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

15 Reduction in outgoings

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) If any outgoings charged, imposed or levied in relation to the premises are reduced—
 - (a) a landlord under an eligible lease must not require a tenant under the lease to pay any amount in respect of that outgoing that is greater than a tenant's proportional share of the reduced outgoing payable under the lease; and
 - (b) if a tenant under an eligible lease has already paid to a landlord under the lease an amount greater than a tenant's proportional share of the reduced outgoing, the landlord must reimburse the excess amount to a tenant as soon as possible.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

16 Payment of deferred rent

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) If any rent is deferred by variation to the eligible lease or an agreement as mentioned under regulation 10(6)—
 - (a) a landlord under the lease must not request payment of any part of the deferred rent until 31 December 2020; and
 - (b) a landlord and tenant must vary the eligible lease or otherwise agree so that tenant must pay the deferred rent to the landlord amortised over the greater of—
 - (i) the balance of the term of the eligible lease, including any extension to that term, as provided under regulation 13 or otherwise; and
 - (ii) a period of no less than 24 months.
- (3) The method by which the deferred rent is amortised for the purposes of subregulation (2) is to be agreed to by the landlord and tenant.
- (4) Subregulation (2) does not apply if a landlord and a tenant agree otherwise in writing.
- (5) To avoid doubt, subregulation (2) as amended by regulation 10(1) of the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Miscellaneous Amendments Regulations 2020 applies to any rent deferred by variation to the eligible lease or an agreement as mentioned under regulation 10(6) before the commencement of those Regulations.

Reg. 16(2)(a)
substituted by
S.R. No.
107/2020
reg. 10(1).

Reg. 16(5)
inserted by
S.R. No.
107/2020
reg. 10(2).

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Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

17 No fees, interest or charges

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord under an eligible lease must not require a tenant under the lease to pay interest or any other fee or charge in relation to the any payment of rent deferred—
 - (a) by variation to the eligible lease or an agreement mentioned under regulation 10(6);
or
 - (b) in compliance with a binding order or an order of a court or VCAT.

Reg. 17(2)
substituted by
S.R. No.
107/2020
reg. 11.

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

Part 4—Change in trading hours

18 Tenant may reduce business hours or cease business during relevant period

- (1) A tenant under an eligible lease is not in breach of any provision of the eligible lease that relates to the opening hours of the business they carry out at the premises if, during the relevant period, they—
- (a) reduce the opening hours of the business they carry out at the premises; or
 - (b) close the premises and cease to carry out any business at the premises.

Reg. 18(1)
amended by
S.R. No.
107/2020
reg. 12(1).

Note

An eligible lease has effect subject to subregulation (1)—see section 17(1) of the Act.

- (2) A landlord under an eligible lease must not evict or attempt to evict a tenant under the eligible lease because the tenant under the eligible lease has taken an action mentioned in subregulation (1)(a) or (b).

Reg. 18(2)
amended by
S.R. No.
107/2020
reg. 12(2).

Penalty: 20 penalty units.

- (3) A landlord under an eligible lease must not re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises under an eligible lease because the tenant has taken an action mentioned in subregulation (1)(a) or (b).

Reg. 18(3)
amended by
S.R. No.
107/2020
reg. 12(3).

Penalty: 20 penalty units.

- (4) A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating to the non-payment of rent under an eligible lease by a tenant under the eligible lease because the tenant has taken an action mentioned in subregulation (1)(a) or (b).

Reg. 18(4)
amended by
S.R. No.
107/2020
reg. 12(4).

Penalty: 20 penalty units.

Part 5—Other obligations

19 Confidentiality of information

- (1) An eligible lease is taken to provide as set out in this regulation.
- (2) A landlord or tenant under an eligible lease must not divulge or communicate protected information obtained under or in connection with the operation of these Regulations except—
 - (a) with the consent of the person to whom the information relates; or
 - (b) to a professional adviser who agrees to keep it confidential; or
 - (c) to an actual or prospective financier who agrees to keep it confidential; or
 - (d) as authorised by the Small Business Commission; or
 - (e) as authorised under law; or

Example

See regulation 24.

- (f) for the purposes of any proceeding in a court or tribunal.
- (3) In this regulation—

personal information means the name, address and contact details of any person (other than the landlord or tenant);

protected information means—

- (a) personal information; or
- (b) information relating to business processes or financial information (including information about the trade of a business).

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and
Licences) Regulations 2020
S.R. No. 31/2020
Part 5—Other obligations

Note

An eligible lease is taken to provide as set out in this regulation and, as such, it forms part of the eligible lease and a landlord and tenant under the eligible lease must observe it.

Part 6—Dispute resolution

Division 1—Mediation of eligible lease disputes by Small Business Commission

20 Referral of eligible lease dispute for mediation by Small Business Commission

- (1) A landlord or a tenant under an eligible lease may refer a dispute about the terms of the eligible lease arising in relation to a matter to which these Regulations apply (an *eligible lease dispute*) to the Small Business Commission for mediation.
- (2) A referral under subregulation (1) must be in writing and—
 - (a) in a form approved by the Small Business Commission; and
 - (b) accompanied by—
 - (i) if the dispute relates to the tenant's request for rent relief under regulation 10, the statement and all other evidence given to the landlord by the tenant under regulation 10(2), including the written request for rent relief; and

Note

Subsequent rent relief requests are made under regulation 10—see regulation 11(2).

- (ii) all relevant correspondence between the landlord and the tenant and related materials; and
- (iii) the contact details of the other party, including their postal address and telephone number; and
- (iv) any other material requested by the Small Business Commission.

Reg. 20(2)
substituted by
S.R. No.
107/2020
reg. 13(1).

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and
Licences) Regulations 2020
S.R. No. 31/2020
Part 6—Dispute resolution

- (2A) The Small Business Commission must give written notice of a referral under subregulation (1) (a *dispute notice*)—
- (a) to the tenant, if referred by the landlord; and
 - (b) to the landlord, if referred by the tenant.
- (2B) A dispute notice must—
- (a) specify the time within which the landlord or tenant must provide a response to the dispute notice under subregulation (2C); and
 - (b) state the consequences of responding to the dispute notice in compliance with subregulation (2C) as set out under subregulation (2D); and
 - (c) state the consequences of failing to respond to the dispute notice as set out under subregulation (2E); and
 - (d) state the consequences of responding to the dispute notice not in compliance with subregulation (2C) as set out under subregulation (2E); and
 - (e) specify the form of response required by the Small Business Commission.
- (2C) On receipt of a dispute notice, a landlord or tenant must respond to the Small Business Commission in the form required by the Small Business Commission within 10 business days after receiving the dispute notice.
- (2D) If the landlord responds to the dispute notice in conformity with subregulation (2C), the Small Business Commission must arrange for the eligible lease dispute to be the subject of mediation under subregulation (3).

Reg. 20(2A)
inserted by
S.R. No.
107/2020
reg. 13(1).

Reg. 20(2B)
inserted by
S.R. No.
107/2020
reg. 13(1).

Reg. 20(2C)
inserted by
S.R. No.
107/2020
reg. 13(1).

Reg. 20(2D)
inserted by
S.R. No.
107/2020
reg. 13(1).

Reg. 20(2E)
inserted by
S.R. No.
107/2020
reg. 13(1).

(2E) If the landlord—

- (a) does not respond to the dispute notice; or
- (b) responds to the dispute notice within the timeframe set under subregulation (2C), but that response does not conform with the other requirements under subregulation (2C); or
- (c) responds to the dispute notice outside of the timeframe set under subregulation (2C), whether or not that response conformed with the formality requirements under subregulation (2C)—

the Small Business Commission may, no earlier than 10 business days after the landlord receives the dispute notice arrange, for the eligible lease dispute to be the subject of mediation or issue a regulation 20A certificate.

- (3) The Small Business Commission may, in relation to an eligible lease dispute, perform or exercise any of the functions or powers that the Commission has under the applicable mediation provisions in relation to the eligible lease dispute, and for that purpose, the applicable mediation provisions apply in relation to the eligible lease dispute as if—
 - (a) a reference in the applicable mediation provisions to a retail tenancy dispute were a reference to an eligible lease dispute; and
 - (b) a reference in the applicable mediation provisions to a retail premises lease were a reference to an eligible lease; and
 - (c) a reference in the applicable mediation provisions to a retail premises were a reference to the premises.

- (4) Mediation under this section is not limited to formal mediation procedures. Mediation extends to preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that—
- (a) the landlord and the tenant are fully aware of their rights and obligations; and
 - (b) there is full and open communication between the landlord and the tenant concerning the matter.
- (5) In referring a dispute under subregulation (1), the parties must not use mediation to prolong or frustrate reaching an agreement.

(5A) The Small Business Commission must take reasonable steps to ensure that the forms referred to in subregulation (2)(a), (2B)(e) and (2C) are published on the Commission's website.

Reg. 20(5A)
inserted by
S.R. No.
107/2020
reg. 13(2).

(6) In this regulation—

applicable mediation provisions means the following provisions under the **Retail Leases Act 2003**, to the extent that they apply to the conduct of a mediation—

- (a) section 84(2), (3) and (4);
- (b) Division 3 of Part 10.

20A Regulation 20A certificate

- (1) The Small Business Commission may certify in writing that mediation under this Part has failed, or is unlikely, to resolve the eligible lease dispute (a *regulation 20A certificate*).
- (2) Without limiting subregulation (1), the Small Business Commission may issue a regulation 20A certificate if the Small Business Commission is of the view that the landlord has not engaged in the mediation process in good faith.

Reg. 20A
inserted by
S.R. No.
107/2020
reg. 14.

- (3) A regulation 20A certificate must contain a statement about whether a landlord has—
- (a) failed to respond to the dispute notice in the form required under regulation 20(2C); or
 - (b) not engaged in mediation in good faith in the opinion of the Small Business Commission.

21 Legal representation

Reg. 21(1)
amended by
S.R. No.
107/2020
reg. 15.

- (1) A landlord or tenant may be represented by a legal practitioner in a mediation of an eligible lease dispute under regulation 20.
- (2) However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the other party) without their legal practitioners who represent them being present.

Pt 6 Div. 1A
(Heading
and regs
21A–21H)
inserted by
S.R. No.
107/2020
reg. 16.

Division 1A—Binding orders for rent relief made by Small Business Commission

21A Application for binding order

Reg. 21A
inserted by
S.R. No.
107/2020
reg. 16.

- (1) A person who is a tenant under an eligible lease in respect of which there is an eligible lease dispute may apply to the Small Business Commission for a binding order if—
 - (a) the dispute relates to a tenant's request for rent relief under regulation 10; and

Note

Subsequent rent relief requests are made under regulation 10—see regulation 11(2).

- (b) the Small Business Commission has issued a regulation 20A certificate to the landlord and tenant in respect of the dispute; and
 - (c) the regulation 20A certificate includes a statement under either regulation 20A(3)(a) or (b); and
 - (d) the tenant has not commenced proceedings in VCAT or a court in relation to the dispute.
- (2) An application under subregulation (1) must be—
- (a) in writing; and
 - (b) in the form specified by the Small Business Commission; and
 - (c) accompanied by—
 - (i) all relevant correspondence and other materials referred to in regulation 20(2)(b) that the tenant has not previously provided to the Small Business Commission under that provision; and
 - (ii) the other material specified by the Small Business Commission.
- (3) An application under subregulation (1) may be accompanied by a written submission to the Small Business Commission.
- (4) The Small Business Commission must take reasonable steps to ensure that the information referred to in subregulation (5) is published on the Commission's website.
- (5) The information that must be published is—
- (a) the form, specified by the Small Business Commission under subregulation (2)(b), of an application for a binding order; and

(b) the material, specified by the Small Business Commission under subregulation (2)(c)(ii), that is to accompany an application for a binding order.

(6) Nothing in this regulation prevents a tenant referred to in subregulation (1) from commencing proceedings in VCAT or a court in relation to an eligible lease dispute referred to in that subregulation.

Reg. 21B
inserted by
S.R. No.
107/2020
reg. 16.

21B Notice of application for binding order

- (1) As soon as practicable after receiving an application under regulation 21A the Small Business Commission must give the material referred to in subregulation (2) to the person who is the landlord under the lease to which the application relates.
- (2) The material that the Small Business Commission must give to the landlord is—
 - (a) written notice of the application under regulation 21A, setting out—
 - (i) the landlord's rights to provide further information under subregulation (3); and
 - (ii) the effect of regulation 21E(3)(b); and
 - (iii) the process that the Small Business Commission will follow under this Division; and
 - (b) a copy of the correspondence and material referred to in regulation 21A(2)(c) that accompanied the application; and
 - (c) a copy of the material referred to in regulation 20(2)(b) that accompanied the referral made under regulation 20 in respect of the eligible lease dispute.

- (3) Within 5 business days after receiving the material, the landlord may give the Small Business Commission—
- (a) any material that the landlord considers the tenant has failed to provide under regulation 20(2)(b) or 21A(2)(c); and
 - (b) a written submission.

21C Small Business Commission may request further information

Reg. 21C
inserted by
S.R. No.
107/2020
reg. 16.

- (1) For the purposes of considering an application under regulation 21A, the Small Business Commission may—
- (a) request the landlord or the tenant to provide further material; and
 - (b) request the tenant to provide evidence that they have taken reasonable steps and have acted in good faith to seek to agree the rent relief with the landlord.
- (2) The Small Business Commission may—
- (a) specify a period for compliance with a request under subregulation (1)(a) or (b); and
 - (b) extend that time if asked to do so by the person to whom the request is made.

21D No hearings for applications for binding orders

The Small Business Commission must not hold any form of hearing for an application for a binding order.

Reg. 21D
inserted by
S.R. No.
107/2020
reg. 16.

21E Decision to make a binding order

- (1) On an application under regulation 21A, the Small Business Commission must make a binding order that complies with regulations 21F and 21G if—
- (a) notice has been given to the landlord under regulation 21B; and

Reg. 21E
inserted by
S.R. No.
107/2020
reg. 16.

- (b) neither the tenant nor the landlord has commenced proceedings in VCAT or a court in relation to the eligible lease dispute to which the application relates; and
- (c) the Small Business Commission is satisfied that—
 - (i) the application complies with regulation 21A; and
 - (ii) it is fair and reasonable in all the circumstances to make the binding order.
- (2) Otherwise, the Small Business Commission must dismiss the application.
- (3) In deciding whether to make a binding order, the Small Business Commission—
 - (a) must have regard to the written submissions, correspondence, evidence and other material provided by either the tenant or the landlord in accordance with—
 - (i) regulation 21A(2)(c), 21A(3) or 21B(3); or
 - (ii) a request under regulation 21C(1)(a) or (b); and
 - (b) may have regard to submissions or other material provided by the landlord outside the period referred to in regulation 21B(3) if the Commission considers it is appropriate to do so; and
 - (c) may have regard to evidence or other material provided by the tenant or the landlord on a request under regulation 21C(1)(a) or (b), but outside the period applying to that request, if the Commission considers it is appropriate to do so.

- (4) For the purposes of subregulation (3)(c), the period applying to a request is—
 - (a) the period specified for compliance with that request under regulation 21C(2)(a); or
 - (b) if that period is extended under regulation 21C(2)(b), the extended period.
- (5) If the Small Business Commission dismisses an application under subregulation (2), the Small Business Commission must give notice to the landlord and the tenant in writing within 5 business days after dismissing the application.

21F Binding orders

- (1) A binding order must be in writing and must state that—
 - (a) the Small Business Commission is of the opinion that the landlord has—
 - (i) failed to respond to a dispute notice in the form required under regulation 20(2C); or
 - (ii) not engaged in mediation in good faith; and
 - (b) the Small Business Commission has issued a regulation 20A certificate in relation to the tenant's request for rent relief under regulation 10; and

Note

Subsequent rent relief requests are made under regulation 10—see regulation 11(2).

- (c) neither the tenant nor the landlord has commenced proceedings in VCAT or a court in relation to the eligible lease dispute; and
- (d) the direction to the landlord to give or agree to give specified rent relief in accordance with regulation 21G; and

Reg. 21F
inserted by
S.R. No.
107/2020
reg. 16.

- (e) the reasons for ordering the specified rent relief.
- (2) If the Small Business Commission makes a binding order, the Small Business Commission must—
 - (a) keep a copy of the binding order until 3 years after the expiration of these Regulations; and
 - (b) give a copy of the binding order to the landlord and the tenant within 5 business days after making the binding order.

Note

The **Electronic Transactions (Victoria) Act 2000** deals with matters relating to keeping and giving electronic documents.

- (3) A binding order comes into effect immediately after a copy of it is given to the landlord.

Reg. 21G
inserted by
S.R. No.
107/2020
reg. 16.

21G What a binding order may require

- (1) A direction to give or agree to give specified rent relief set out in a binding order must comply with regulation 10(4) as if the direction were an offer of rent relief.
- (2) A direction in a binding order to give, or agree to give, specified rent relief may require the landlord to do either or both of the following things—
 - (a) waive part or all of the rent payable under an eligible lease from the date of the tenant's request for rent relief in respect of which the application for a binding order was made to 31 December 2020; and
 - (b) defer payment of part of the rent payable under an eligible lease from the date of the tenant's request for rent relief in respect of which the application for a binding order was made to 31 December 2020, so that the

tenant must pay the deferred rent to the
landlord amortised over the greater of—

- (i) the balance of the term of the eligible
lease, including any extension to that
term, as provided under regulation 13
or otherwise; and
 - (ii) a period of no less than 24 months.
- (3) A binding order may also specify the method by
which rent deferred as described in subregulation
(2)(b) is amortised.

21H Cessation of binding order process

- (1) If a tenant has made an application under
regulation 21A, but the Small Business
Commission has not yet determined that
application, the landlord and the tenant may
jointly notify the Small Business Commission that
they have agreed on the rent relief and a binding
order is no longer required.
- (2) On receipt of a notice under subregulation (1)
from both the landlord and the tenant, the Small
Business Commission must dismiss the
application that was made under regulation 21A.
- (3) If the Small Business Commission dismisses an
application under subregulation (2), the Small
Business Commission must give notice to both the
landlord and the tenant within 5 business days
after doing so.

Reg. 21H
inserted by
S.R. No.
107/2020
reg. 16.

Pt 6 Div. 1B
(Heading
and regs
21I–21P)
inserted by
S.R. No.
107/2020
reg. 16.

Division 1B—Amendment of binding order

Reg. 21I
inserted by
S.R. No.
107/2020
reg. 16.

21I Application for amendment or revocation of binding order

- (1) A person who is a tenant or a landlord under an eligible lease in respect of which a binding order has been made may apply to the Small Business Commission for an amendment to, or revocation of, that order.
- (2) An application under subregulation (1) must be in writing.

Reg. 21J
inserted by
S.R. No.
107/2020
reg. 16.

21J Small Business Commission may dismiss application in certain circumstances

- (1) If the Small Business Commission determines that an application under regulation 21I does not have sufficient merit to justify further consideration, the Commission may dismiss the application.
- (2) If the Small Business Commission dismisses an application under subregulation (1), the Commission must give notice to both the landlord and the tenant within 5 business days after doing so.

Reg. 21K
inserted by
S.R. No.
107/2020
reg. 16.

21K Small Business Commission may propose amendment on its own initiative

- (1) If, other than on an application under regulation 21I, the Small Business Commission considers that a binding order ought to be amended, the Small Business Commission may, in accordance with regulation 21L, propose that the amendment be made.

- (2) Unless exceptional circumstances apply, the Small Business Commission must not propose an amendment other than an amendment to correct—
- (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures; or
 - (d) a material mistake in the description of a person, thing or matter referred to in the order; or
 - (e) a defect of form.

21L Small Business Commission to give notice if amendment or revocation is to be considered

Reg. 21L
inserted by
S.R. No.
107/2020
reg. 16.

- (1) If the Small Business Commission receives an application under regulation 21I and does not dismiss that application under regulation 21J, the Commission must give notice of the application to—
- (a) if the application was made by the tenant—the landlord; or
 - (b) if the application was made by the landlord—the tenant.
- (2) The Small Business Commission must give a notice under subregulation (1) as soon as practicable after receiving the application.
- (3) If the Small Business Commission proposes an amendment to a binding order under regulation 21K, the Commission must give notice of the proposal to the tenant and the landlord.
- (4) A notice under subregulation (1) or (3) must set out—
- (a) the person's right to provide a written submission under subregulation (5); and

- (b) the effect of regulation 21O(3)(b); and
 - (c) the process that the Small Business Commission will follow under this Division.
- (5) Within 5 business days after receiving the notice, the person to whom it is given may give to the Small Business Commission a written submission regarding the application or proposal.

Reg. 21M
inserted by
S.R. No.
107/2020
reg. 16.

21M Small Business Commission may request further information

- (1) For the purposes of considering an application under regulation 21I or a proposal under regulation 21K, the Small Business Commission may request the landlord or the tenant provide further material.
- (2) The Small Business Commission may—
 - (a) specify a period for compliance with a request under subregulation (1); and
 - (b) extend that time if asked to do so by the person to whom the request is made.

Reg. 21N
inserted by
S.R. No.
107/2020
reg. 16.

21N No hearings for applications to amend or revoke binding orders

The Small Business Commission must not hold any form of hearing for an application for an amendment to, or the revocation of, a binding order.

Reg. 21O
inserted by
S.R. No.
107/2020
reg. 16.

21O Amending or revoking a binding order

- (1) On an application under regulation 21I, the Small Business Commission may decide to—
 - (a) grant the application and amend or revoke the binding order in respect of which it is made; or
 - (b) dismiss the application.

- (2) Following the proposal of an amendment in accordance with regulation 21K, the Small Business Commission may decide to make, or not to make, the proposed amendment.
- (3) In deciding whether to grant the application, or to make the proposed amendment, the Small Business Commission—
 - (a) must have regard to—
 - (i) a submission given in accordance with regulation 21L(5); and
 - (ii) material given in accordance with a request under regulation 21M(1); and
 - (b) may have regard to a submission given outside the period referred to in regulation 21L(5) if the Commission considers it is appropriate to do so; and
 - (c) may have regard to material given on a request under regulation 21M(1), but outside the period applying to that request, if the Commission considers it is appropriate to do so; and
 - (d) may consider any other matter the Commission considers relevant, including whether the binding order contains—
 - (i) a clerical mistake; or
 - (ii) an error arising from an accidental slip or omission; or
 - (iii) a material miscalculation of figures; or
 - (iv) a material mistake in the description of a person, thing or matter referred to in the order; or
 - (v) a defect of form.

- (4) For the purposes of subregulation (3)(c), the period applying to a request is—
 - (a) the period specified for compliance with that request under regulation 21M(2)(a); or
 - (b) if that period is extended under regulation 21M(2)(b), the extended period.
- (5) An amendment to, or the revocation of, a binding order takes effect immediately after a copy of the amended order, or notice of the revocation, is given to the landlord under regulation 21P.

Reg. 21P
inserted by
S.R. No.
107/2020
reg. 16.

21P Notice of amendment or revocation of binding order

If the Small Business Commission amends or revokes a binding order under regulation 21O, the Small Business Commission must give a copy of the amended order, or notice of the revocation, to both the landlord and the tenant within 5 business days after amending or revoking the order.

Note

The **Electronic Transactions (Victoria) Act 2000** deals with matters relating to keeping and giving electronic documents.

Pt 6 Div. 1C
(Heading and
regs 21Q,
21R)
inserted by
S.R. No.
107/2020
reg. 16.

Division 1C—Review by VCAT

Reg. 21Q
inserted by
S.R. No.
107/2020
reg. 16.

21Q Applications for review by VCAT

- (1) A landlord or a tenant under an eligible lease may apply to VCAT for review of any of the following—
 - (a) a decision under regulation 21E(1) to make a binding order in respect of that lease;

- (b) a decision under regulation 21E(2) to dismiss an application for a binding order in respect of that lease;
 - (c) a decision under regulation 21J(1) to dismiss an application for an amendment to or the revocation of, a binding order made in respect of that lease;
 - (d) a decision under regulation 21O(1)(a) to grant an application for an amendment to, or the revocation of, a binding order made in respect of that lease;
 - (e) a decision under regulation 21O(1)(b) to dismiss an application for an amendment to, or the revocation of, a binding order made in respect of that lease;
 - (f) a decision under regulation 21O(2) to make, or not to make, an amendment to a binding order made in respect of that lease.
- (2) An application for review under subregulation (1) must be made within 14 days after the Small Business Commission makes the decision.
 - (3) In addition to any other parties, the tenant and the landlord are parties to the review.
 - (4) In considering an application for review under subregulation (1), VCAT must have regard to the matters set out in regulation 22(2).
 - (5) An application for review of a decision under regulation 21E(1) to make a binding order stays the operation of the binding order unless VCAT orders otherwise.

Reg. 21R
inserted by
S.R. No.
107/2020
reg. 16.

21R Breach of binding orders

- (1) A person—
 - (a) who is a tenant under an eligible lease in respect of which a binding order is made; and
 - (b) who considers that the landlord has not complied with the binding order—

may apply to VCAT for a determination of whether the landlord has complied with the binding order.
- (2) In addition to any other parties, the landlord is a party to the proceeding.
- (3) On an application under subregulation (1), VCAT—
 - (a) must determine whether the landlord has complied with the binding order; and
 - (b) may make any orders that VCAT considers appropriate, including—
 - (i) an order requiring the landlord to comply with the binding order; and
 - (ii) an order amending the binding order.

Pt 6 Div. 1D
(Heading
and regs
21S–21V)
inserted by
S.R. No.
107/2020
reg. 16.

Division 1D—Other matters

Reg. 21S
inserted by
S.R. No.
107/2020
reg. 16.

21S Severing, dividing or combining matters in eligible lease disputes

- (1) If an eligible lease dispute is referred to the Small Business Commission under regulation 20, and it relates to more than one matter, the Small Business Commission may do either of the

following things at any time before a proceeding is commenced in VCAT or a court in relation to the dispute—

- (a) sever from the eligible lease dispute any matter that the Small Business Commission decides mediation is unlikely to resolve; or
 - (b) divide the eligible lease dispute into 2 or more matters, if it is convenient to resolve them separately.
- (2) If more than one eligible lease dispute in relation to the same or related facts and circumstances is referred to the Small Business Commission under regulation 20, the Commission may—
- (a) determine that the disputes constitute one eligible lease dispute; and
 - (b) determine which of the referrals is to be taken to be a referral of that one dispute.
- (3) If an application under regulation 21A for a binding order is made in respect of an eligible lease dispute that relates to more than rent relief, the Small Business Commission may sever that other matter from the eligible lease dispute.
- (4) If the Small Business Commission decides to take any action under subregulation (1) or (2) or (3), the Small Business Commission must give both the landlord and the tenant written notice of the decision within 5 business days
- (5) If the Small Business Commission severs any matter from an eligible lease dispute under subregulation (1)(a) or (3), for all purposes—
- (a) the eligible lease dispute is taken not to include that matter; and

- (b) the severed matter is taken to be a distinct eligible lease dispute that is the subject of its own referral or application (as the case requires).

Note

Regulation 20A authorises the issuing of certificates in respect of eligible lease disputes. This includes those that arise because of severance in accordance with subregulation (1)(a) or (3).

- (6) If the Small Business Commission severs or divides an eligible lease dispute into 2 or more matters under subregulation (6), for all purposes, each of those matters is taken to be a distinct eligible lease dispute.

Note

Regulation 20A authorises the issuing of certificates in respect of eligible lease disputes. This includes those that arise because of division in accordance with subregulation (2).

Reg. 21T
inserted by
S.R. No.
107/2020
reg. 16.

21T Evidentiary status of statements made during mediation and binding order process

- (1) Evidence of anything said or done by a person specified in subregulation (2), in the course of doing a thing specified in subregulation (3), is not admissible in any proceeding before VCAT or in any other legal proceeding except as set out in subregulations (4) and (5).
- (2) Subregulation (1) applies to—
- (a) a person who is—
- (i) a landlord under an eligible lease; or
 - (ii) a tenant under an eligible lease; or
 - (iii) legally representing a landlord or tenant in mediation; or
 - (iv) employed or engaged by the Small Business Commission; and

- (b) the Small Business Commission.
- (3) Subregulation (1) applies to things done in the course of—
 - (a) referring an eligible lease dispute to the Small Business Commission under regulation 20 for mediation; or
 - (b) exercising a function, power or right under Division 1 in relation to an eligible lease dispute referred under regulation 20; or
 - (c) a mediation of an eligible lease dispute referred under regulation 20; or
 - (d) applying for a binding order, or amendment or revocation of a binding order; or
 - (e) responding to, or providing further information, evidence, submissions or other material in relation to, an application for a binding order, or for amendment or revocation of a binding order.
- (4) Evidence referred to in subregulation (1) is admissible in a proceeding referred to in that subregulation if—
 - (a) it is evidence of a written communication from the Small Business Commission to a landlord or a tenant; or
 - (b) both the landlord and the tenant agree in writing to the giving of the evidence; or
 - (c) VCAT or the court hearing the proceeding otherwise orders, having regard to the interests of justice and fairness.
- (5) Nothing in this regulation prevents the use of any information or document disclosed in a mediation or binding order process for the purposes of deciding whether a binding order may be made, amended or set aside.

Reg. 21U
inserted by
S.R. No.
107/2020
reg. 16.

- (6) A binding order is admissible as evidence in any proceedings at VCAT or in a court.

21U Giving notices—general

- (1) A notice or other document to be given to a person under the Act or these Regulations by the Small Business Commission must be given—
- (a) by delivering it personally to the person; or
 - (b) by leaving it at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (c) by sending it to the person by post addressed to the person's usual or last known place of residence or business; or
 - (d) if the person is a corporation—
 - (i) by sending it by post to the registered office in Victoria of the corporation; or
 - (ii) by giving it to a person who is an officer of the corporation who is authorised to accept service of notices and who is employed at the registered office of the corporation; or
 - (e) by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.
- (2) If a notice or other document is to be given to a landlord under this Part, in addition to the methods set out in subregulation (1), the notice or document may be given—
- (a) by delivering it to the landlord or to the landlord's agent or to the person who usually collects the rent; or

- (b) by sending it by post addressed—
 - (i) to the landlord at the landlord's address for service of documents; or
 - (ii) to the landlord's agent at the agent's usual place of business; or
- (c) by giving it to a person employed in the office of the landlord's agent.

21V No restriction on section 19(1)(c) of the Act

To avoid doubt, nothing in this Part is intended to restrict the Small Business Commission's function under section 19(1)(c) of the Act to commence proceedings for offences against regulations made under section 15.

Reg. 21V
inserted by
S.R. No.
107/2020
reg. 16.

**Division 2—Determination of eligible lease disputes
by VCAT or court**

22 Jurisdiction of VCAT

- (1) Subject to regulation 23, Division 4 of Part 10 of the **Retail Leases Act 2003** (other than section 89(4)) applies to an eligible lease dispute referred to the Small Business Commission under these Regulations as if—
 - (a) a reference in that Division to a retail tenancy dispute were a reference to an eligible lease dispute; and
 - (b) a reference in that Division to a retail premises lease were a reference to an eligible lease.

Note

This regulation only applies if the eligible lease is a retail lease—see section 15(1)(o) of the Act, under which this regulation is made.

Note to
reg. 22(1)
inserted by
S.R. No.
107/2020
reg. 17(1).

- (2) In making an order in a proceeding relating to an eligible lease dispute, VCAT must also have regard to—
- (a) the matters set out in regulation 10(4)(d); and
 - (b) any regulation 20A certificate issued by the Small Business Commission; and
 - (c) any binding order made by the Small Business Commission under regulation 21E in relation to the dispute; and
 - (d) if such a binding order has been made by the Small Business Commission, the reasons for ordering the specified rent relief in the binding order; and
 - (e) any evidence of the conduct of the landlord and the tenant since the binding order came into effect; and
 - (f) the statement included in the binding order under regulation 21F(1)(a).

Reg. 22(2)(b)
amended by
S.R. No.
107/2020
reg. 17
(2)(a)(b).

Reg. 22(2)(c)
inserted by
S.R. No.
107/2020
reg. 17(2)(c).

Reg. 22(2)(d)
inserted by
S.R. No.
107/2020
reg. 17(2)(c).

Reg. 22(2)(e)
inserted by
S.R. No.
107/2020
reg. 17(2)(c).

Reg. 22(2)(f)
inserted by
S.R. No.
107/2020
reg. 17(2)(c).

23 Determination by VCAT or a court

- (1) An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the Small Business Commission has issued a regulation 20A certificate in respect of the dispute.

Reg. 23(1)
amended by
S.R. No.
107/2020
reg. 18(1).

- (2) An eligible lease dispute may only be the subject of a proceeding in the Supreme Court if—
- (a) the Small Business Commission has issued a regulation 20A certificate in respect of the dispute; or
 - (b) the landlord or tenant, as the case requires, has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute.
- (3) Subregulations (1) and (2) do not—
- (a) apply to a proceeding for an order in the nature of an injunction; or
 - (b) affect the validity of any decision made by VCAT or a court.
- (4) To avoid doubt, nothing in this Part prevents a dispute from being dealt with through a compulsory conference, mediation or any other alternative dispute resolution process under—
- (a) the **Civil Procedure Act 2010**; or
 - (b) rules of court made by the Supreme Court or any practice direction applying to a proceeding in that court; or
 - (c) rules of court made by the County Court or any practice direction applying to a proceeding in that court; or
 - (d) rules of court made by the Magistrates' Court or any practice direction applying to a proceeding in that court; or
 - (e) rules within the meaning of the **Victorian Civil and Administrative Tribunal Act 1998** and any practice direction applying to a proceeding in VCAT.

Reg. 23(2)(a)
amended by
S.R. No.
107/2020
reg. 18(2).

Part 7—General

Pt 7 Div. 1
(Heading)
inserted by
S.R. No.
107/2020
reg. 19.

Division 1—Information disclosure

24 Information given by tenant in rent relief request may be used by landlord for applying for tax relief

- (1) A landlord under an eligible lease may give the statement and information under regulation 10(2) given to the landlord by a tenant under the lease to the Commissioner of State Revenue for the purpose of applying to be eligible for a tax relief measure in relation to any tax paid or required to be paid by the landlord in relation to the premises.
- (2) In this regulation—
tax relief measure has the same meaning as in Part 9A of the **Taxation Administration Act 1997**.

Pt 7 Div. 2
(Heading
and regs
24A–24E)
inserted by
S.R. No.
107/2020
reg. 20.

Division 2—Savings provisions

Reg. 24A
inserted by
S.R. No.
107/2020
reg. 20.

24A Definitions

In this Division—

agreement relating to rent relief means—

- (a) an eligible lease varied as mentioned in regulation 10(6)(a); or
- (b) an agreement mentioned in regulation 10(6)(b) under which a tenant under an eligible lease is given rent relief; or
- (c) an eligible lease varied to give a tenant under an eligible lease rent relief, or an agreement under which a tenant under

an eligible lease is given rent relief entered into by the tenant and landlord, as a consequence of a mediation under Division 1 of Part 6;

amending Regulations means the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Miscellaneous Amendments Regulations 2020;

applicable lease means a retail lease or a non-retail commercial lease or licence;

applicable order means—

- (a) a binding order; or
- (b) an order of a court or VCAT directing the landlord to give, or to agree to give, a tenant under an eligible lease rent relief.

24B Effect of subsequent ineligibility for jobkeeper scheme on rent relief arrangements that are in place

Reg. 24B
inserted by
S.R. No.
107/2020
reg. 20.

- (1) This regulation applies if on or after the commencement of the amending Regulations—
 - (a) a tenant under an eligible lease ceases to be an entity entitled to a jobkeeper payment under section 6, 11 or 12A of the jobkeeper rules; and
 - (b) an agreement relating to rent relief or an applicable order applies.
- (2) Despite anything to the contrary in these Regulations, while the agreement relating to rent relief or an applicable order applies, regulations 9, 12, 14, 15 and 18 continue to apply to the tenant's applicable lease, and for the purposes of these Regulations, the applicable lease is an eligible lease.

Reg. 24C
inserted by
S.R. No.
107/2020
reg. 20.

**24C Effect of subsequent ineligibility for jobkeeper
scheme—unresolved requests for rent relief**

- (1) This regulation applies if—
- (a) before, on or after the commencement of the amending Regulations a tenant under an eligible lease makes a request under regulation 10; and
 - (b) before there is any agreement relating to rent relief under which the tenant may be given rent relief, or an applicable order that applies, the tenant under the eligible lease ceases to be entitled to a jobkeeper payment under section 6, 11 or 12A of the jobkeeper rules.
- (2) Despite anything to the contrary in these Regulations, on and after the commencement of the amending Regulations the tenant's applicable lease is an eligible lease for the purposes of these Regulations until an agreement relating to rent relief entered into by the tenant ceases to apply or an applicable order is revoked, as the case requires.
- (3) To avoid doubt, regulation 24B applies to an applicable lease referred to in subregulation (2) on and after an agreement relating to rent relief or applicable order referred to in that subregulation applies to the tenant.

Note

Subsequent rent relief requests are made under regulation 10—see regulation 11(2).

**24D Continued application of certain obligations after
non-application of agreements relating to rent relief**

Reg. 24D
inserted by
S.R. No.
107/2020
reg. 20.

- (1) This regulation applies if on or after the commencement of the amending Regulations—
 - (a) a tenant under an eligible lease ceases to be an entity entitled to a jobkeeper payment under section 6, 11 or 12A of the jobkeeper rules; and
 - (b) an agreement relating to rent relief under which the tenant is given rent relief applies.
- (2) Despite anything to the contrary in these Regulations, regulations 13, 16 and 17 continue to apply with respect to any rent deferred under the agreement relating to rent relief until the tenant's applicable lease ceases to apply, and for the purposes of these Regulations, the applicable lease is an eligible lease.

**24E Certain non-rent relief related rights and
obligations continue after ineligibility for jobkeeper
scheme**

Reg. 24E
inserted by
S.R. No.
107/2020
reg. 20.

- (1) This regulation applies if on or after the commencement of the amending Regulations a tenant under an eligible lease ceases to be an entity entitled to a jobkeeper payment under section 6, 11 or 12A of the jobkeeper rules.
- (2) Despite anything to the contrary in these Regulations, on and after the commencement of the amending Regulations and until the tenant's applicable lease ceases to apply, regulations 19 and 24 continue to apply to the applicable lease, and for the purposes of these Regulations, the applicable lease is an eligible lease.

Pt 7 Div. 3
(Heading)
inserted by
S.R. No.
107/2020
reg. 21.

Reg. 25
amended by
S.R. No.
107/2020
reg. 22.

Division 3—Expiry

25 Expiry of these Regulations

These Regulations expire on 31 December 2020.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020, S.R. No. 31/2020 were made on 1 May 2020 by the Governor in Council under section 15 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**, No. 11/2020 and are taken to have come into operation on 29 March 2020: regulation 3.

The COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 will expire on 31 December 2020: see regulation 25 (as amended by regulation 22 of the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Miscellaneous Amendments Regulations 2020, S.R. No. 107/2020).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule.

This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms.

See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and
Licences) Regulations 2020
S.R. No. 31/2020
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 by statutory rules, subordinate instruments and Acts.

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences)
Miscellaneous Amendments Regulations 2020, S.R. No. 107/2020

Date of Making: 29.9.20

Date of Commencement: 29.9.20

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

COVID-19 Omnibus (Emergency Measures) (Commercial Leases and
Licences) Regulations 2020
S.R. No. 31/2020
Endnotes

4 Explanatory details

No entries at date of publication.