

A modern commercial building with a large glass facade reflecting the sky and surrounding trees. The building has a white base and a glass upper section. In the foreground, there are green bushes and a paved area.

# **LEGAL & TAXATION UPDATES**

## **COVID19 APRIL 2020**

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**Welcome to The Commercial Property  
Cashflow Webinar**



# BEHIND THE SCENES UPDATES....

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Preparing for your Bootcamps and Meetups Via Livestream



# TONIGHT'S PANEL

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<https://www.youtube.com/channel/UCYiDdyDetvdK1aiuD81WlgQ>

Looking at the Government Document:

NATIONAL CABINET MANDATORY CODE OF CONDUCT

SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

# TONIGHT'S PANEL

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# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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- Hibernation- On Hold- to come out as if nothing had changed... with rough edges
- National cabinet - set of ideas... QLD has enacted it- Vic it's just a policy at this stage.
- Starting point between tenants and landlords to negotiate and navigate through the lockdown - “share the pain”
- No 2 circumstances will be the same... resources between landlord and tenant- lease length, have they been forced to shut? Limping along?
- These are currently high level concepts



# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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- SME turnover up to \$50 million
- Include franchisees... but exclude bigger stores owned by a larger group
- Tenant MUST have registered for JobKeeper Program- Turnover fall by 30% and more.
- Some action by tenants... “not paying rent for 3 months” eg Hungry Jacks & others
- Principles to try and get into state of hibernation
- Be reasonable & share information
- How much tenant’s turnover is down
- LL- Land tax relief or mortgage relief

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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- If turnover reduced by 60% - rent must be reduced by 60%
- 50% of that must be by rent waiver and the rest by deferral.
- Ie 30% written off and 30% paid back by tenant later on...
- Tenant has up to 2 years to pay back deferred payments.
- Tenant cannot use this to get out of the lease.
- Landlord cannot charge fees for deferrals- must suspend rent increases & if restrictions last for 6 months- need to extend lease for 6 months
- Started Early March Early April
- Run for 6 months alongside JObKeeper (30th Sept 202) May be extended

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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What happens if people are unreasonable?

- Provisions around Binding mediations- imposing a solution.
- In practice... may be inundated and could take a while to have mediation
- If a landlord's lender provides a deferral... how much should be passed onto the tenant? More questions need to be resolved down the line.
- What's reasonable rent relief? Look at the government guidelines.
- On the other side- "Day Of Reckoning" Be mindful!



# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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Does this apply if your Landlord is your SMSF? Are there implications regarding Super Laws?

Need to deal with the Super Fund Rules- Get onto your accountant.

What if the tenant has not been in business 12 months. Are they still eligible for job-keeper?

- Needed to have been in for 12 months- but as a landlord, try and act in the spirit of the code and help them.

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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Is there a maximum rental relief percentage? beauty salons and dentists would be eligible for a 50% waiver

Ie -100% no cashflow- shutdown... so 50% written off and 50% repaid over life of lease or over 24 months

Is that 50% written off provided by the landlord - YES

What if the tenant has declared bankruptcy ? Is there any provision in place should this happen ?

- Tenant is supposed to commit to lease- but some businesses won't come out of this.

We don't know all the details on this yet.

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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What is in place for landlord to protect them from no rents ??

- Gov't has leaned in on banks and said landlords can defer their payments...

What if landlord declared bankrupt how do you get tenants out?

- Lease still binds landlord... if tenant is SME and eligible for jobkeeper-LEASE still rules.

Do landlords need any legal document once the lease is over to continue paying the deferred rent?

- Both sides should record in writing their agreement. Professional advice & Deed of variation is even better. Loan agreements etc... Security etc-Payment Plans...



# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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My tenant wanted to break their lease before Covid crisis. Now they have closed voluntarily. Does this change the negotiation?

- Tenants not supposed to use Covid to take advantage of breaking the lease. If closed late Feb... pretty clear it had nothing to do with crisis- if mid march & later- bit harder to prove motivations.

Do the tenants still have to pay the rates or the reduction is also applicable to the rent waiver and deferred payment?

- Expectation is they continue to pay outgoings. If outgoings can be reduced- landlords to pass on savings.

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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Landlords are in a harder place so how does landlord survive financially?

- Deferrals on your own mortgage payments... If living on rents received... living on nothing - each situation is unique. Look at negotiating with your tenant.

Once a new arrangement (deferment/waiver/etc) has been negotiated, do you recommend getting the agreements in a contract drafted by a lawyer?

- Worth running past a lawyer. Experience and expertise.
- May or may not need a “Deed of Variation”

# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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We can't evict tenants for 6 months, but what can we do if tenant doesn't want to pay anything?

- Talk about being able to take the to the small business commissioner- they are required to commit to their lease. They cannot just walk away.

What if fixed term lease ends in 3 months as scheduled and can we terminate the lease ?

- we are supposed to give them 6 months for shutdown and another 3 months after. But if it doesn't make sense- then talk to the tenant and negotiate.



# LEGAL IMPLICATIONS APRIL 2020 – LEWIS O BRIEN

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What about the most landlords who do have mortgages??

- Go to bank and talk about rescheduling mortgage payments if rent has been reduced by x%
- Land tax deferrals, council rates etc.
- Cash-flow for short term... ??? Other side.

Part of outgoings passed to tenant is a management fee (real Estate Agent) which is percentage of rent received. Can I continue to charge this on the deferred rent?

- Should only be a % on the actual rent received. It will be adjusted at the time the deferred payments are made...

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- What we're going through "Theatre Sports" nothing is definitely known at this point in time
- Cash-flow from accounting point of view
- Gov't treading carefully- elections in mind down the track- Big Picture
- Landlord with restaurant- now operating as a take-away  
Getting \$200 / day- Asked agent for support
- Tenant wanting to terminate lease- leave all equipment at \$0K  
( but at auction it's only worth \$5K - and negotiate on security deposit
- Cash-flow - loan buffer from bank

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- Are you going to keep your tenant and how fast will tenant be able to recover?
- They cannot recover 100% cash-flow after they open immediately- will take time (months)
- Australian Bankers association website- what you can access
- Tenant- Business type- what cash-flow they can generate.
- Do a deal with your tenant- extension- take it forward from there.
- Tax perspective- income tax lower



# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- Whole situation is very fluid- time will clarify
- If business not in business for 12 months.... How to show reduction in income
  - A very good question and lots of new businesses are asking. There is the commissioners discretion clause for business that do not tick all the boxes. A special application has to be made with case study and projections.
- Pushing money onto biz owners to keep money flowing. The options and solutions the government is putting forward- could be several resources - testing to see what's useful
- Land Tax in NSW- meet all eligibility test- Red tape to get through

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- Finding & Pulling Levers!!!! Fine tune for your personal situation
- Summary on Website:
- <https://propertytaxspecialists.com.au/wp-content/uploads/2020/04/COVID-19-Stimulus-and-support-Measures-09042020-v7.pdf>
- [https://propertytaxspecialists.com.au/covid-19-stimulus-and-measures-what-you-can-access-and-how/?ct=t\(April\\_17\\_Newsletter\\_Tax\\_Time\\_Tax\\_Tips\\_fo4\\_28\\_2017\\_\)&mc\\_cid=e5ee30d561&mc\\_eid=0cae8d8d84](https://propertytaxspecialists.com.au/covid-19-stimulus-and-measures-what-you-can-access-and-how/?ct=t(April_17_Newsletter_Tax_Time_Tax_Tips_fo4_28_2017_)&mc_cid=e5ee30d561&mc_eid=0cae8d8d84)

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- So why are we still paying pay as you go instalments or base throughout this time?
  - IN prior year- income with no withholding tax - eg net rent
  - impact on business- ATO is more understanding & flexible for this situation
  - examine & estimate income & with your accountant estate tax, what you've already paid- what else will need to be paid over next quarter- go in ask for variation.
  
- PRESERVE CASHFLOW.

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- What sort of document to prove our turn over has been reduced by 30% or more?
  - criteria for JobKeeper etc.
  - measure monthly or quarterly
  - commissioners discretion required if income is unevenly earned
  - Starting point is lodging of BAS's ATO will have this data already.
- we've been asked by our accountant to pay \$thousands BAS, yet we have applied for job keeper, so catch 22... so if our income is reduced which it is) why is our accountant asking for such huge bass and pre paid taxes? yes it does
  - stimulus package
  - 1. cash boost (offset as PAYG off your wages & employees wages) Still need to pay GST
  - 2. Subsidise wages - JobKeeper - need to report that you have something to qualify for these

# TAX IMPLICATIONS APRIL 2020 – SHUKRI BARBARA & AMIR ISHAK

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- You are allowed to vary your PAYG instalment if you expect to earn less this year. I read on the ATO website that they will not penalise a business if the varied amount is less than is eventually owed.



# HELEN & STEPHEN NEW DEAL

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➤ Mortgagee in repossession



## EXPIRY -

This Code comes into effect in all states and territories from a date following 3 April 2020 (being the date that National Cabinet agreed to a set of principles to guide the Code to govern commercial tenancies as affected by the COVID- 19 pandemic) to be defined by each jurisdiction, for the period during which the Commonwealth JobKeeper program remains operational.

## NATIONAL CABINET MANDATORY CODE OF CONDUCT – SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

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

- Landlords and tenants share a common interest in working together, to ensure business continuity, and to facilitate the resumption of normal trading activities at the end of the COVID-19 pandemic during a reasonable recovery period.
- Landlords and tenants will be required to discuss relevant issues, to negotiate appropriate temporary leasing arrangements, and to work towards achieving mutually satisfactory outcomes.
- Landlords and tenants will negotiate in good faith.
- Landlords and tenants will act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code.

## OVERARCHING PRINCIPLES:

- Any agreed arrangements will take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.
- The Parties will assist each other in their respective dealings with other stakeholders including governments, utility companies, and banks/other financial institutions in order to achieve outcomes consistent with the objectives of this Code.

## OVERARCHING PRINCIPLES:

- All premises are different, as are their commercial arrangements; it is therefore not possible to form a collective industry position. All parties recognise the intended application, legal constraints and spirit of the Competition and Consumer Act 2010.
- The Parties will take into account the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.



## NATIONAL CABINET MANDATORY CODE OF CONDUCT – SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

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### OVERARCHING PRINCIPLES:

- All leases must be dealt with on a case-by-case basis, considering factors such as whether the SME tenant has suffered financial hardship due to the COVID-19 pandemic; whether the tenant's lease has expired or is soon to expire; and whether the tenant is in administration or receivership.
- Leases have different structures, different periods of tenure, and different mechanisms for determining rent. Leases may already be in arrears. Leases may already have expired and be in "hold-over." These factors should also be taken into account in formulating any temporary arrangements in line with this Code.
- As the objective of this Code is to mitigate the impact of the COVID-19 pandemic on the tenant, due regard should be given to whether the tenant is in administration or receivership, and the application of the Code modified accordingly.

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

- 1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
- 2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.

## NATIONAL CABINET MANDATORY CODE OF CONDUCT – SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

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### LEASING PRINCIPLES:

- 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.

### LEASING PRINCIPLES:

- 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.

## NATIONAL CABINET MANDATORY CODE OF CONDUCT – SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

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### LEASING PRINCIPLES:

- 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.



## LEASING PRINCIPLES:

- 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.

## LEASING PRINCIPLES:

- 13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant.
- 14. Landlords may not apply any prohibition on levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

## NATIONAL CABINET MANDATORY CODE OF CONDUCT – SME COMMERCIAL LEASING PRINCIPLES DURING COVID-19

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### DEFINITIONS:

- 1. Financial Stress or Hardship: an individual, business or company's inability to generate sufficient revenue as a direct result of the COVID-19 pandemic (including government-mandated trading restrictions) that causes the tenant to be unable to meet its financial and/or contractual (including retail leasing) commitments. SME tenants which are eligible for the federal government's JobKeeper payment are automatically considered to be in financial distress under this Code.
- 2. Sufficient and accurate information: this includes information generated from an accounting system, and information provided to and/or received from a financial institution, that impacts the timeliness of the Parties making decisions with regard to the financial stress caused as a direct result of the COVID-19 event.

### DEFINITIONS:

- 3. Waiver and deferral: any reference to waiver and deferral may also be interpreted to include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease), or any other such commercial outcome of agreements reached between the parties. Any amount of reduction provided by a waiver may not be recouped by the Landlord over the term of the lease.
- 4. Proportionate: the amount of rent relief proportionate to the reduction in trade as a result of the COVID-19 pandemic plus a subsequent reasonable recovery period, consistent with assessments undertaken for eligibility for the Commonwealth's JobKeeper programme.

# PODCAST **SUBSCRIBE**



Keep updated with Helen's  
Tips and Strategies on her  
Podcast channel...

**Commercial Property  
Roadshow with Helen  
Tarrant**

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- <https://podcasts.apple.com/ph/podcast/commercial-property-roadshow-with-helen-tarrant/id1484804524?>



# YOUTUBE ROAD-SHOW **SUBSCRIBE**

The screenshot shows the YouTube channel page for 'Commercial Property Roadshow With Helen Tarrant'. The banner at the top features a collage of images including a modern building, a whiteboard with diagrams, a red car on a road, and Helen Tarrant in various settings. Below the banner is the channel's profile picture, name, and subscriber count (186 subscribers). Navigation tabs for HOME, VIDEOS, PLAYLISTS, CHANNELS, DISCUSSION, and ABOUT are visible. On the right, there are 'SUBSCRIBED' and notification bell icons, both highlighted with green arrows. The 'Uploads' section shows a row of five video thumbnails with their titles and view counts:

Video Title	Duration	Views	Time Ago
How To Create \$72,000 per year in Passive Income &... HOW DID HE ACHIEVE THAT?!	11:08	86 views	5 days ago
COMMERCIAL PROPERTY INSPECTION Kuranda Villag...	12:58	65 views	6 days ago
COMMERCIAL PROPERTY ROADSHOW WITH HELEN...	3:08	161 views	1 week ago
COMMERCIAL PROPERTY ROADSHOW WITH HELEN...	2:25	219 views	2 weeks ago
FINDING YOUR TOP 3 COMMERCIAL PROPERTY...	11:53	176 views	2 weeks ago

Keep updated with Helen's Tips and Strategies on her YouTube channel... **Commercial Property Roadshow with Helen Tarrant**  
- <https://www.youtube.com/channel/UCnw-fdCKbEScizdoTcGyDJw>





# HIGH YIELD COMMERCIAL MEET-UP & BOOTCAMP

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*Livestream TBA*