



ACT GOVERNMENT RESPONSE ON COMMERCIAL TENANCIES DURING THE COVID-19 HEALTH EMERGENCY

Guidance notes to tenants and lessors

Chief Minister, Treasury and Economic
Development Directorate

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ACT GOVERNMENT COVID-19 RESPONSE ON COMMERCIAL TENANCIES

GUIDANCE NOTES TO TENANTS AND LESSORS

Introduction

This guidance document sets out the key elements of the ACT Government's approach to implementing the National Code of Conduct for commercial leasing principles. This approach is supported by ACT Government rates relief for commercial lessors, available from 1 April 2020, which will assist in sharing the cost of rent reductions provided by lessors to their tenants.

More information about commercial rates relief is available on the COVID-19 website at: www.covid19.act.gov.au.

This document has been updated to reflect the Commonwealth's announcements in July and August 2020 of Extension 1 and Extension 2 to the JobKeeper arrangements. For convenience, the new arrangements in force on 28 September 2020 are described as the JobKeeper Extension scheme in these guidance notes.

More information about the JobKeeper Extension scheme and the new turnover tests can be found at <https://www.ato.gov.au/General/JobKeeper-Payment/JobKeeper-extension-announcement/>

This document will be updated if the Commonwealth or ACT Governments announce new measures or there is a need for changes to the operation of existing measures in light of updated information available to the ACT Government.

Commercial tenancy laws and legal frameworks differ across the States and Territories and COVID-19 response measures, whilst seeking appropriate uniformity, must nevertheless be based on local circumstances.

You should always make sure the information you are relying on relates to the Australian Capital Territory. Please note that the effects of the changes discussed below will depend upon the circumstances of the individual commercial tenancy agreement. This guidance is not legal advice and it is advisable to seek independent legal advice about your individual circumstances.

The National Code

On 7 April 2020, National Cabinet released a [Mandatory Code of Conduct](#) (National Code) which contains small to medium enterprise (SME) commercial leasing principles relating to the COVID-19 crisis period. The National Code imposes a set of principles which will apply to negotiating amendments in good faith to existing commercial leasing arrangements which meet the code criteria.

Its purpose is to allow the financial impacts of COVID-19 to be shared in an appropriate manner between tenants and lessors. It is recognised that arrangements that vary lease conditions will need to be tailored, bespoke and appropriate to circumstance.

The National Code has been implemented by most State and Territories by way of legislation or regulatory order.

While the National Code is described as mandatory, each State and Territory has adopted its own approach to implementing the Code and/or the principles contained in it. There has been a uniform effort nationwide to take the National Code principles forward while recognising that each State and Territory needs to tailor its response to suit the legislative and commercial context of each jurisdiction.

ACT's approach to the National Code

Regulatory Framework

The ACT Government implements the National Code through a declaration power in the *Leases (Commercial and Retail) Act 2001* (the Leases Act). This power was provided to the Attorney-General in the *COVID-19 Emergency Response Act 2020* as part of the ACT's COVID-19 response.

This power, under section 177 of the Leases Act, provides that the Minister may make a declaration in relation to the following matters for the purpose of responding to the public health emergency caused by the COVID-19 pandemic:

- (a) prohibiting the termination of a lease to which this Act applies by a lessor in stated circumstances;
- (b) prohibiting the recovery of possession of premises under the lease by the lessor in stated circumstances;
- (c) changing any period under the lease or this Act in which someone must or may do something;
- (d) changing, limiting or preventing the exercise or enforcement of any other right of the lessor under the lease or this Act in stated circumstances;
- (e) exempting a tenant or lessor, or class of tenant or lessor, from the operation of a provision of this Act, a lease to which this Act applies or any other agreement relating to the lease of the premises.

Commercial Leases Declaration

The Commercial Leases Declaration provides temporary measures for commercial tenants and lessors financially impacted by the COVID-19 Health Emergency in the ACT. Together with the ACT Government's rates relief for eligible landlords, the declaration creates a strong incentive for landlords and tenants to negotiate and find mutually beneficial outcomes to reflect the reality of current operating conditions and the financial capacities of all parties.

The Commercial Leases Declaration requires lessors to negotiate in good faith having regard to the overarching principles and leasing principles (the principles) in the National Code with an impacted tenant before giving a termination notice or exercising a right of enforcement under a lease to which the Leases Act applies.

- > The declaration applies where an *impacted tenant* commits a *prescribed breach* under a *prescribed lease* during the *prescribed period*.
- > The declaration captures any termination notice given to, or *prescribed action* taken by the lessor against an impacted tenant in response to a prescribed breach.

These terms are defined in the Commercial Leases Declaration and are summarised below.

A new Commercial Leases Declaration

On 10 September 2020, the Attorney-General made a new Commercial Leases Declaration (the [Leases \(Commercial and Retail\) COVID-19 Emergency Response Declaration 2020 \(No. 2\)](#)) to reflect the changed requirements for the [JobKeeper Extension](#) scheme that take effect from 28 September 2020.

These changes affect the definition of an impacted tenant (see below) under the new Declaration. The new Declaration commences on 28 September 2020 and revokes the previous Declaration. The 'in good faith negotiation' requirement remains the same.

The new Declaration will remain in place no later than 31 January 2021.

Definitions

The Declaration applies where an *impacted tenant* commits a *prescribed breach* under a *prescribed lease* during the *prescribed period*.

The concept of an *impacted tenant* is a key threshold for the Commercial Leases Declaration and defines the commercial tenants with whom a lessor will need to negotiate in good faith having regard to the National Code principles.

From 28 September 2020, an *impacted tenant* is a tenant who:

- > qualifies for the JobKeeper Extension scheme at any time during the prescribed period; and
- > has an annual turnover of less than \$50 million for 2018-19 financial year.

Former impacted tenants ¹ under the previous Declaration remain protected in respect of any prescribed breaches that occurred during the period 1 April to 27 September 2020.

An impacted tenant commits a *prescribed breach* where they fail to pay rent, outgoings or other amounts due under a prescribed lease or to operate the business during the hours required under that lease. The breach must have occurred during the prescribed period.

The concept of a prescribed breach does not encompass other breaches, such as a tenant wilfully damaging the landlord's property. This will not affect other rights a lessor has to enforce a lease against an impacted tenant.

Under the Declaration, a *prescribed lease* is a lease to which the Leases Act applies that was entered into before 7 April 2020. The Declaration will not apply to new lease arrangements that have been entered into from 7 April 2020, when the National Cabinet announced States and Territories would implement the National Code, as parties entering new arrangements from this time would have done so aware of the business conditions they were entering.

The prescribed breach must have occurred during the *prescribed period*. The prescribed period commences on 28 September 2020 and concludes when the new Declaration is no longer in force. This will be no later than 31 January 2021.

The Declaration also applies to any termination notice given to, or prescribed action taken against, an impacted tenant after the Declaration expires, where these actions relate to a prescribed breach by the impacted tenant during the prescribed period.

In good faith

The Commercial Leases Declaration provides that a lessor will have engaged in good faith negotiations where they have negotiated with the tenant having regard to the overarching principles and leasing principles set out in the National Code (the National Code principles).

Good faith negotiation can be initiated by either a landlord or a tenant (see Attachment A) and it is expected to involve:

- > a tenant providing evidence substantiating financial hardship (evidenced by receipt of JobKeeper as basis for reduction in turnover of at least 30 per cent);

¹ Prior to 28 September 2020, an *impacted tenant* is a tenant who:

- > qualifies for the Commonwealth JobKeeper scheme at any time during the period from 1 April 2020 to 27 September 2020; and
- > has an annual turnover of less than \$50 million for the 2018-2019 financial year.

- > a landlord providing evidence substantiating their financial position;
- > negotiation taking place, having regard to the National Code principles;
- > where agreement is reached, that resolution is documented, and new arrangements are set in place under the existing lease; and where issues are not resolved, either party may seek mediation.

It is only at this point that, if the tenant contests either a termination, or the landlord takes prescribed action for a prescribed breach, that the process may go to the Magistrates Court for determination.

The National Code as released by the Prime Minister on 7 April 2020 is included as a schedule to the Commercial Leases Declaration. The ACT Government considers the principles in the Code an appropriate commencement point for negotiations between lessors and tenants considering changes in lease arrangements, including variations in rents.

Mediation

The requirement for the lessor to engage in good faith negotiations with an impacted tenant will be supported by the Local Business Commissioner (Commissioner), Mr Brendan Smyth, acting as Commercial Tenancy Mediator. The Commissioner will act as an independent third party to assist lessors and tenants to negotiate a new leasing agreement in good faith having regard to the principles of the National Code.

The Commissioner's role will be to assist parties to interact respectfully and decide an outcome for themselves having regard to the overarching principles and leasing principles in the National Code. The service provided by the Commissioner is voluntary and free on the part of the parties.

The intent of these arrangements is to allow impacted tenants to remain in business wherever possible, and the National Code encourages tenants to remain in their lease arrangement.

Recognising that tenants may decide to cease trading, at this time as in any circumstance of financial difficulty, the normal operation of the Leases Act will apply if tenants decide to terminate their lease notwithstanding good faith negotiations.

That is, the Commercial Leases Declaration will not, at that point, provide further protections to the tenant.

The ACT Government's commercial rates assistance package also provides a strong incentive for landlords and tenants to negotiate rental reductions in good faith, having regard to the National Code principles. This package allows landlords to receive targeted rates relief where they provide rental relief to their commercial tenants.

Is the Code mandatory in the ACT?

The ACT approach does not expressly set out the National Code leasing principles as prohibitions, such as a prohibition on terminating leases due to the non-payment of rent during the COVID-19 period. Nor does it compel parties to reduce rent by a set percentage, or to remain in their lease for a set period of time.

Rather, the ACT's approach to implementing the National Code brings about an environment where parties must negotiate in good faith in relation to the National Code principles.

The requirements which lessors must meet under the Commercial Leases Declaration create an active preventative focus by encouraging dialogue upfront regarding preserving the viability of the impacted tenant's business. Lessors retain their contractual rights to terminate a lease, but only providing they first establish they have negotiated with the tenant having regard to the overarching principles and leasing principles in the National Code. Tenants and lessors must also still comply with the Leases Act.

By requiring in good faith negotiations before exercising a contractual right to terminate under a prescribed lease, regard for the National Code principles is a mandatory component in dealings between lessors and impacted tenants for a prescribed breach.

The ACT's model meets the intent of the National Code, which recognises the importance of timely good faith negotiations between parties. It also recognises that negotiations must be conducted on a case by case basis and that there is no 'one size fits all' approach to what is appropriate in each circumstance. The National Code recognises this and contemplates parties making alternative commercial arrangements to the National Code provisions. Ultimately, negotiations should have regard to the financial position of all parties.

Negotiations could therefore see variance from specific terms in the National Code. By way of example, the National Code contemplates a 'two year or life of lease' period for repayment of deferred rent through the COVID-19 period. This repayment period will need to be agreed between the parties, noting that some leases can be for periods of more than 10 years in duration.

The process of supporting the National Code through the Commercial Leases declarations recognises the incentives that lessors and tenants have in COVID-19 environment to negotiate and reach mutually agreeable outcomes.

Frequently Asked Questions

Which Commercial Leases are subject to the Declaration?

The Commercial Leases Declaration operates where the tenant is an impacted tenant under a prescribed lease to which the Leases Act applies.

From 28 September 2020, an impacted tenant is a tenant who:

- > has qualified for the JobKeeper Extension scheme at any time during the prescribed period in accordance with JobKeeper rules in force on 28 September 2020. Qualification for JobKeeper demonstrates that the tenant is suffering financial stress or hardship as a result of the COVID-19 pandemic; and
- > has annual business turnover less than \$50 million in the 2018-2019 financial year, as per the latest set of audited annual accounts, or other independently verified information such as ATO tax information.

Former impacted tenants under the previous Declaration remain protected in respect of any prescribed breaches that occurred during the period 1 April to 27 September 2020.

When does the Commercial Leases Declaration have effect?

The Commercial Leases Declaration applies to:

- > a termination notice by the lessor, to an impacted tenant; and
- > the lessor seeking to enforce a right under the lease

for a prescribed breach of the lease which occurred on or after 28 September 2020 and during the remainder of the prescribed period.

Greg's Fashionwear suffers a downturn in trade during the prescribed period and fails to pay rent in October 2020. Two months after the prescribed period has ended, Landlord Property Group unilaterally issues Greg's Fashionwear with a penalty notice, without any discussion, for failure to pay rent during October 2020.

It would be open to Greg's Fashionwear to dispute the penalty notice under the Commercial Leases Declaration. In determining the dispute, the Magistrates Court would need to be satisfied Landlord Property Group had entered into good faith negotiations before issuing the penalty notice.

However, a failure by Greg's Fashionwear to pay rent after the conclusion of the new Commercial Leases Declaration (no later than 31 January 2021) would not require the parties to engage in good faith negotiations prior to Landlord Property Group taking action to impose a penalty.

What assistance is available to commercial landlords and how can an application be made?

The ACT Government rates rebate assistance for commercial landlords will be available for general rates charged from 1 April 2020 for up to nine months based on the tiered category system, where the building has an average unimproved value (AUV) of \$2 million or below. The level of assistance provided will depend on individual circumstances such as the extent to which the tenant has been impacted by COVID-19 and the level of rent reduction that has been agreed. In order to show eligibility, a declaration will need to be made by the commercial property owner and tenant that negotiations have been done in good faith, having regard to the National Code principles.

The tiered category system was established to ensure business tenants suffering the most financial hardship get the highest level of support. The three broad categories of tenants or owner operators with commercial properties with an AUV of **\$2 million or below** are:

- > **Category 1** – Businesses partially or not affected. Business tenants should continue to pay rent and no rental reduction assistance will be provided by the ACT Government.
- > **Category 2** – Businesses significantly affected (at least 30 per cent reduction in business income) but still operating.
 - For landlords, assistance will be up to 25 per cent of the rent reduction, capped per quarter at lower of \$5,000 (or around \$380 per week) or total of the quarterly rates bill.
- > **Category 3** – Businesses who have effectively shut-down operations (at least 80 per cent reduction in business income).
 - For landlords, assistance will be 50 per cent of the rent reduction, capped per quarter at lower of \$8,000 (or around \$615 per week) or total of the quarterly rates bill.

Note: Commercial unit rates are calculated on the AUV of the individual unit, not the whole block. This means more than 90 per cent of commercial properties will be within the \$2 million and under AUV threshold.

Landlords considering reducing a tenant's rent should consider:

- > the rent reduction;
- > the number of tenants in the property that fall under categories 2 and 3; and
- > their capacity to absorb income losses.

The assistance caps above do not apply to landlords with an **AUV above \$2 million**, these properties will be considered by the Government on a case by case basis.

Landlords with an **AUV of \$2 million or above**, will need to contact ACT Treasury to apply for support via email at: COVID19TaxAssistance@act.gov.au.

Assessment for these properties will be based on the following broad principles:

- > declaration of good faith negotiations having regard to National Code by the commercial property owner and business tenants;
- > assistance level will be based on the impact of COVID-19 on the businesses occupying the property and/or ability of the property owner to absorb the associated impact from COVID 19, in line with the tiered categories;
- > the type of assistance will also depend on the ability of the property owner to absorb the impact in either the short or longer term; and
- > any other relevant matters such as previous assistance provided or specific circumstances of the business occupying the property.

Further details on the information that should be provided for assessment is available at www.revenue.act.gov.au and the factsheet on the COVID-19 website at: www.covid19.act.gov.au.

How does the Commercial Leases Declaration interact with the ACT's rate assistance package?

To receive assistance from the ACT Government, commercial landlords are required to negotiate in good faith with their tenants, having regard to the principles of the National Code. Commercial property owners will be required to make this statement as part of their application for assistance to the ACT Government.

How do these arrangements apply to sub-tenants?

The arrangements outlined in this document will apply to situations where tenants of a premises have sub-tenancy arrangements and the sub-lease is a lease to which the Leases Act applies. Further, this approach is consistent with the underlying principle of these arrangements that the impacts of COVID-19 on business operations of tenanted businesses should be appropriately shared across all relevant parties and is consistent with the intent of the National Code.

How will the arrangements apply to large corporate groups?

The \$50 million annual turnover threshold for application of the Commercial Leases Declaration to companies will be determined at the corporate group level, rather than the individual retail outlet level.

How will the arrangements treat multiple franchises?

The \$50 million annual turnover threshold for franchisees will be considered at the franchisee level, based on the business conducted at the premises or the land under the lease.

How will the arrangements apply in multi-tenanted sites?

Lessors who own a commercial property with multiple tenants and lease agreements will need to engage in good faith negotiations with each tenant. The focus of the Commercial Leases Declaration and the National Code is the consideration of each lease on a case by case basis. This reflects the highly individual nature of commercial lease arrangements as well as the extent to which different tenants will have been financially impacted by the COVID-19 emergency.

What evidence should parties bring to a negotiation?

The overarching principles for the National Code provide that lessors 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 having regard to the National Code principles.

In practice, the majority of information is likely to be brought by tenants.

For tenants: qualifying for JobKeeper

Tenants who are impacted tenants under the new Declaration in place from 28 September 2020 need to show their landlord that they qualify for the JobKeeper Extension scheme as in force on 28 September 2020.

For tenants: \$50 million turnover

An annual business turnover of less than \$50 million in the 2018-2019 financial year could be established by providing the latest set of audited annual accounts, or other independently verified information such as ATO tax information.

For tenants: Impact of COVID-19

A lessor will want to understand the extent to which the tenant has suffered financial hardship, when considering the degree to which they may be willing to decrease the rent.

A tenant's calculation of actual GST turnover can be provided in discussions with the lessor in order to provide evidence of how their business has been impacted by COVID-19 and to open negotiations on a temporary rent reduction.

The National Code's overarching principles state that arrangements will take into account the tenant's revenue, expenses, and profitability. If there has not been a reduction in turnover yet expenses have substantially increased, then this information should be presented in negotiations for rent reduction in accordance with the principles of the National Code.

Evidence of the level of reduction in turnover should be provided if the tenant expects the lessor to fully engage in their request for rent relief. The new actual decline in turnover test required for the JobKeeper Extension scheme should assist impacted tenants in being able to provide this evidence to landlords.

Tenants already in arrears prior to the impacts of COVID-19 are not made ineligible under these arrangements due to missed rental payments; however, the arrears will remain and would need to be considered during negotiations under the National Code.

For landlords: reductions in liabilities

Landlords should disclose benefits received from financial institutions, reduced statutory charges or insurance as part of good faith negotiations aligned with the principles of the National Code.

What amounts to a good faith negotiation?

The Commercial Leases Declaration requires good faith negotiations between the landlord and the impacted tenant, having regard to the National Code principles, prior to the landlord terminating the lease or taking adverse action for a prescribed breach.

Parties should be prepared to be open and transparent in their negotiation, with a view to understanding the respective financial positions of the parties. For a lessor, this can include acknowledging the financial hardship suffered by the tenant from the economic impact of the COVID-19 pandemic.

As noted above, the tenant should provide the lessor with information to assist the landlord to reach an understanding that the tenant:

- > has qualified for the JobKeeper Extension scheme at any time during the prescribed period; and
- > has suffered financial hardship from the economic impact of the COVID-19 pandemic.

The level of information required to establish the tenant has suffered financial hardship from the economic impact of COVID-19 may necessarily be broad.

While a good faith negotiation is unlikely to require a person to provide information that approaches the level of certainty which may be required in Court proceedings, the information should be credible.

A lessor is unlikely to be negotiating in good faith if they refuse to constructively engage with their tenant unless the tenant proves they have secured every Governmental assistance possible prior to any meaningful discussion.

Further, for the negotiation to be in good faith, the parties will need to negotiate with regard to the National Code principles. Simply attending a negotiation with a party, or a mediation but refusing to engage on those principles is unlikely to be engaging in good faith.

A step through visual overview of a potential good faith negotiation is provided at the end of this document at [Attachment A](#).

I know I'm meant to negotiate in good faith having regard to the National Code principles – but my tenant has lost 80% of their trade and just wants to go. What do I do?

The Commercial Leases Declaration requires parties to negotiate in good faith with regard to the National Code principles.

The National Code principles contain an expectation that there will be an offer of reduced rent when the landlord is given information that the tenant is financially suffering. Further, there is an expectation that the landlord will negotiate having regard to the specific circumstances of the impacted tenant. This stems from the hope that businesses can carry through this period and that leases would only be terminated by tenants in exceptional circumstances.

In this circumstance, the landlord should open a dialogue with their tenant and ask the tenant if they would be willing to carry on in the lease if they reduce the rent and provide for deferred rental payments.

Ultimately, it will be a matter for a tenant if they choose to walk away. However, the Commercial Leases Declaration is designed to ensure tenants have the best chance to make it through the COVID-19 period through preventing leases being terminated without the parties having the opportunity to discuss how they can help each other in the current climate.

As noted earlier in these guidelines, where following negotiation a tenant concludes that they wish to terminate a lease, any actions allowable to the landlord under the lease agreement (including recovery of a bond) will be available to the landlord. That is the Commercial Leases Declarations will not, at that point, provide further protections to the lessee.

My tenant won't reopen now some of the restrictions are lifting. What can I do?

The answer depends upon whether the parties are negotiating in good faith.

The Commercial Leases Declaration requires landlords to negotiate in good faith before taking action against an impacted tenant for a failure to maintain the hours required by the lease.

If an impacted tenant seeks a rent reduction for reason that it is not economically viable to re-open, or to partially re-open, they should be willing to explain this to their landlord. A tenant should be able to explain why they feel it is more prudent not to re-open, or partially re-open, in such circumstances. But this process isn't an interrogation – it's a sensible discussion in good faith by both parties so both can be trading successfully once the effects of COVID-19 are gone.

It is in the interests of both parties to provide sufficient information regarding their financial capabilities to allow for an in good faith negotiation. This factor, and not whether a person is or is not prohibited from trading, should ground the negotiation.

However, if your tenant refuses to negotiate in good faith and is not meeting the terms of their lease, then the normal rules of leasing apply.

Business is starting to pick up but I'm carrying a lot of debt from the downturn. Is it too late to negotiate with my landlord?

If you haven't opened up a discussion with your landlord on how you've been financially impacted by COVID-19, it is still ok to do so.

The Commercial Leases Declarations provide a framework for good faith negotiations between landlords and tenants, with parties to have regard to the financial reality of each other's circumstances. It provides scope for you to re-negotiate the rent with your landlord, in the form of waivers and deferrals, to assist your business to remain manageable over the longer term.

Landlords and tenants are supported by ACT Government assistance measures during the COVID-19 period.

Will the declaration apply to when the ACT Government is the landlord?

Yes. The Commercial Leases Declarations apply to the Government where it is a landlord to which a lease applies under the Leases Act.

The ACT Government will review rent charges for commercial tenants of ACT Government properties whose operations have been significantly impacted by COVID-19. Commercial tenants that can demonstrate this may receive rental relief.

I no longer qualify for JobKeeper. What happens now?

If a tenant does not qualify for the JobKeeper Extension scheme at any time during the prescribed period, then the new Commercial Leases Declaration does not apply to those tenants.

However, tenants who are former impacted tenants under the previous Declaration are still protected against unilateral termination or other prescribed action for breaches that occurred between 1 April 2020 and 27 September 2020.

Furthermore, the ACT Government policy position is that tenants and landlords should where possible negotiate in good faith in relation to leases irrespective of whether the tenant qualifies for JobKeeper, and irrespective of whether a Commercial Leases declaration applies.

Where a tenant expects to qualify for the JobKeeper Extension scheme at any time during the prescribed period, information that supports this expectation should be made available to landlords to facilitate early in good faith negotiations.

What is the role of the commercial tenancy mediator?

The Local Business Commissioner, Mr Brendan Smyth, acting as the Commercial Tenancy Mediator is an independent third party to assist landlords and tenants to negotiate amendments to their leasing agreements in good faith, having regard to the National Code principles. The Commissioner's role will be to assist parties to interact respectfully and decide an outcome for themselves.

The mediation service offered by the Commissioner does not replace or affect in any way mediation under the Leases Act.

The services offered by the Commissioner will be:

- > voluntary for the parties
- > free for the parties
- > aimed at facilitating an agreed outcome for both parties which they would agree to be binding on both parties
- > confidential both in terms of discussions and outcomes.

The Commissioner cannot:

- > compel parties to mediation
- > make a decision about the outcome
- > give binding advice
- > decide who is right or wrong.

Both parties may wish to pay for a private mediator rather than use the Commercial Tenancies Mediator.

As the Commissioner is not making a decision, his actions are not reviewable by the ACT Civil and Administrative Tribunal.

Outcomes of mediation

Where a resolution is negotiated between the lessor and the tenant, the parties are bound by that agreement. The resolution of the mediation will need to be recorded in the form of a binding agreement.

If the parties are unable to reach a resolution, the Magistrates Court will need to determine whether the landlord has participated in good faith in accordance with the National Code principles before making a termination order.

What is the role of the Commercial Tenancies Administration Committee?

The National Code envisages the establishment in each State and Territory of a Code Administration Committee which will comprise representatives from relevant industry bodies representing landlord, tenant and Small to Medium Enterprise interests, with an independent chair appointed by the relevant Government.

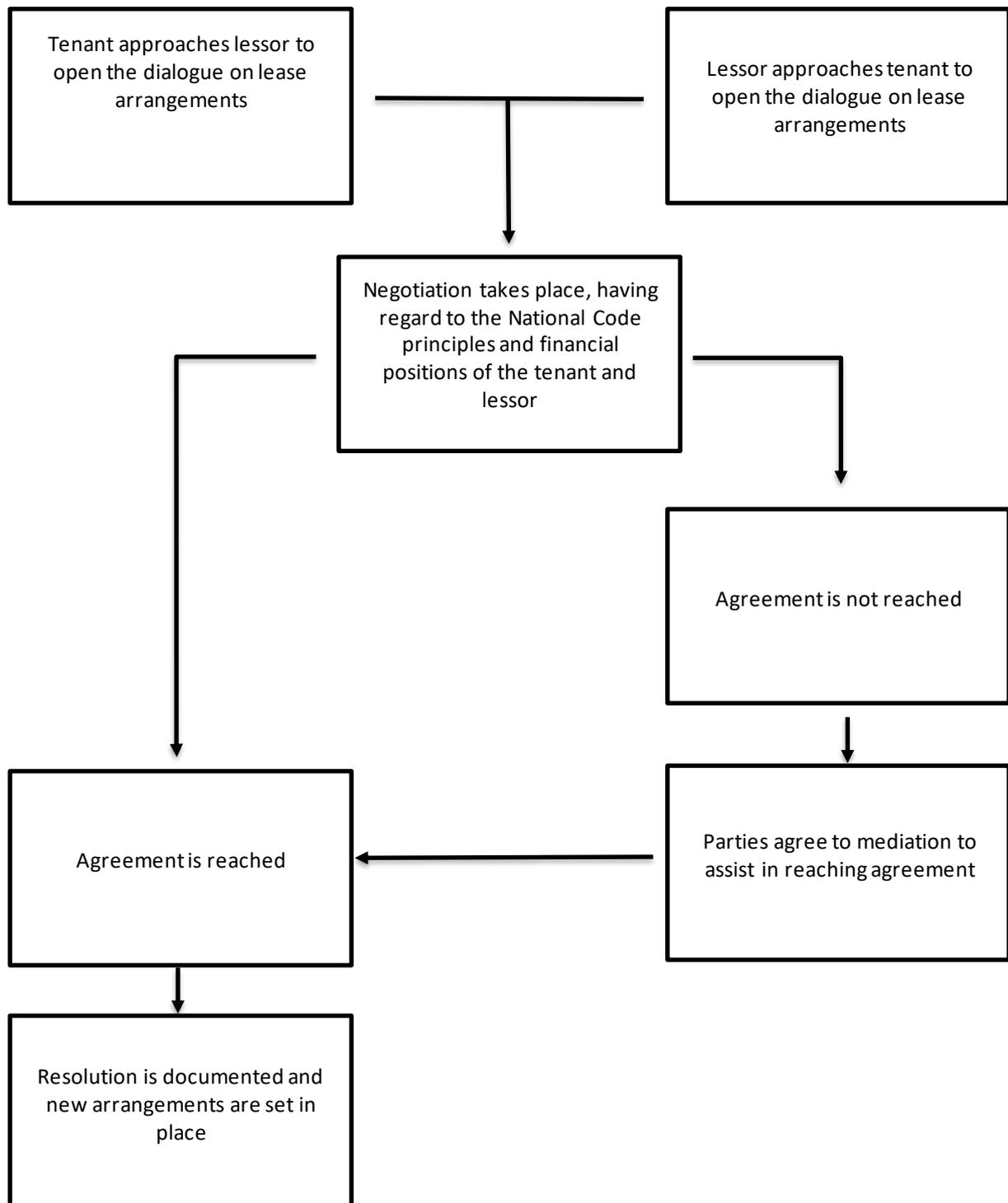
The ACT Commercial Tenancies Administration Committee has been established to work with stakeholders in the commercial tenancy space. A key function of the Committee is to make lessors aware, at an early stage, of the need to engage in good faith negotiations with the National Code principles before seeking lease termination. This awareness will encourage parties to engage sooner rather than later and will help to avoid the possibility of parties engaging in dialogue only when termination is in prospect.

The Committee in the ACT comprises:

- > Renee Leon, PSM – Chair
- > Alfonso del Rio – Member
- > Adina Cirson – Member
- > Anthony Brierley – Member

Attachment A

Good faith negotiation will be able to be initiated by either a landlord or a tenant. It is expected that a negotiation in good faith will involve the following steps:





Chief Minister, Treasury and Economic
Development Directorate

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