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Australia's property industry
Creating for Generations

24 April 2020

Mr Tim Pallas MP
Treasurer of Victoria
Level 4, 1 Treasury Place
EAST MELBOURNE VIC 3002

By email: sashi.balamaran@minstaff.vic.gov.au

The Hon Adem Somyurek MLC
Minister for Small Business
Level 16, 121 Exhibition Street
MELBOURNE VIC 3000

By email: robert.larocca@minstaff.vic.gov.au

Dear Treasurer and Minister,

Predatory tenant behaviour – case studies

Further to our previous correspondence regarding the implementation of the National Cabinet's Code of Conduct for commercial tenancies, we write to you to illustrate that many landlords are at great financial risk given the predatory behaviour of opportunistic tenants.

Over the past week, the Property Council has been inundated with case studies from our landlord members of unruly tenants. As set out in Annexure A, many tenants are demanding relief that far exceeds what could be considered fair, proportionate or reasonable. In many cases, tenants are plainly refusing to pay rent irrespective of their financial circustmances or otherwise refusing to provide supporting evidence of those financial circumstances.

As you will notice, we have removed identifying features from these case studies as they are commercial-in-confidence.

While most tenants are doing the right thing and working with their landlords to reach equitable and 'good faith' agreements, it appears that some companies are demanding relief with no thought to the context of their own business or the impact on the landlord. In a number of cases, businesses that have experienced an increase in revenue due to COVID-19 (including pharmacies and supermarkets) are demanding relief. This is outrageous and is placing the financial viability of many landlords at risk.

We are seeing companies whose revenues are in the hundreds of millions and even billions of dollars dictating to landlords about rent-free periods for an indefinite time. In some cases, lessees are demanding 100 per cent rent relief until the health *and* economic crisis is over.

Separately, the information we have received from members shows the unintended consequences that mandated rental relief can have on the property market. We have heard from one member who exchanged contracts for the sale of a retail asset in South Melbourne at the end of February, with the transaction due to settle on 27 April. The purchaser is trying to terminate the contract on the basis that the tenant of the shop has applied for rent relief and that this "considerably varies the terms of the Contract" and the assumptions regarding asset revenue.

We bring this information to your attention to highlight that many landlords in Victoria are struggling to negotiate equitable relief for tenants when often faced with opportunistic demands. We ask that you keep these examples in mind when drafting regulations under the *COVID-19 Omnibus (Emergency Measures) Act 2020* ***[NOTE: this assumes the letter is sent after the bill passes Parliament]***, to allow flexibility and support for landlords who are also struggling to survive this pandemic.

We again thank you for the constructive way in which you continue to engage with industry throughout this challenging period.

Yours faithfully,

Cressida Wall
Executive Director, Victoria
Property Council of Australia

Annexure A: examples of tenant demands

Tenant	Relief Demands
Industrial property tenant in Melbourne's east	Tenant has applied for a 100 per cent rental waiver and has stopped paying rent that is due and owing until the end of the COVID-19 pandemic. The landlord has requested financial information to assess the tenant's financial circumstances and seek to substantiate its loss of revenue but this information has not been provided.
National retail furniture business	Tenant has stopped paying rent and has not provided financial information despite repeated requests. Tenant is part of a retail furniture chain with over 50 stores nationally. It claims to fall within the Code of Conduct, but has provided no evidence to allow the landlord to assess this, despite numerous requests.
National pharmacy chain	Despite claiming that sales have been strong during the pandemic period, a national pharmacy chain has written to landlords proposing a 50 per cent rent reduction from April to June (25 per cent waived, and 25 per cent deferred). The owners of the tenant chain are forecasting revenue to increase from $4 billion to $10 billion.
National industrial property tenant	A tenant has over $1 billion in turnover, but is a low-margin business. The industrial property that it leases is the best performing in its portfolio by a large margin, and remains open and operating at full capacity. The tenant, which has capital backing, has only paid 50 per cent of the rent due and owing to the landlord. It has otherwise refused to engage with the landlord.
Licensed hotel operator	Unlike numerous other hotel premises, the tenant has closed its doors and is not continuing to trade on a takeaway/delivery basis (which it is licensed to do). Tenant's turnover has, therefore, decreased by 100 per cent. "Turnover rent" is payable under the lease but, with no turnover, there will be no rent payable. Under the proposed Code, the landlord must allow a 100 per cent reduction in rent, 50 per cent of which must be waived and the balance of which can be deferred. During the period of rent reduction, the landlord will generate no income.
National women's apparel company	Rent reduction of 100 per cent (in gross terms) backdated to 1 February and to be in place until the pandemic has been declared over. As rent for February and March have already been paid in full, tenant is dictating that landlord credits this amount towards any future rent agreed to be payable once the crisis has passed. If the amount of that credit is unused, for example due to a store closure, the lessee has outlined that credit will revert to the company by way of a cash payment. Any percentage rent credit balances owed to the lessee at March 30 are to be refunded by landlord by way of cash payment. The publicly available information for this company reveals it generated $3.6B last financial year.
National food and beverage franchise	Lessee dictated it will defer 100 per cent of gross rental payments for three months, or until restrictions are lifted.

Tenant	Relief Demands
	This comes despite the company's trading patterns showing signs of returning to normal. Annual turnover in Australia last financial year was $1.4B.
ASX-listed national childcare provider	Rent reduction of 50 per cent (including outgoings) from 1 April 2020 to 30 September 2020. According to 2019 Annual Report, lessee's statutory revenue was $922.2M.
British owned multi-national optical group	Lessee dictated it will now pay a proportional amount of rent. In this case, occupancy costs account for 8 per cent of turnover and the lessee is demanding this is the basis on which it will now make future rent payments. They have instructed the landlord that this arrangement will be reviewable monthly. In simple terms, the lessee is demanding it pays only 8 per cent of its monthly rent across all retail locations. According to its FY19 financial reports, the company had a total turnover of £2.78B (or AUD $5.62B).
National takeaway franchise (still trading currently with restrictions)	Rent reduction of 100 per cent from 1 April 2020 to 31 August 2020. Lessee is also dictating a deferral of 50 per cent of the monthly rent for the next three months after the above initial period. This deferred rental will be paid in instalments, with no interest charged, over a 12-month period. Annual turnover listed at $55M.
National homewares retailer	Rent reduction of 100 per cent from 1 April 2020 for an indefinite period. The lessee is dictating that rent will not be paid until the World Health Organisation declares an end to the pandemic. According to financial reports, turnover of US $10.9M last financial year (or AUD $17.2M).
National automotive parts franchise	Lessee is dictating a switch from base rent to a total occupational cost equivalent to 5 per cent of turnover to the end of their lease (which still has a number of years to run). The same company has approached several landlords with the same request which is not in line with either sector benchmarks or market practice. In one centre, its turnover is strong and growing month-on-month, and they have been in occupation for less than a year following the lessor's delivery of a new turn-key unit in good faith in 2019. According to financial reports, last year the lessee company had a turn over of $128M.
National apparel company – in fact, Australia's largest global retailer	Rent reduction of 100 per cent for six months. Turnover last financial year according to reports was $1.8B.