***Updated: 19 August 2021***

# ***This letter may be used to follow up commercial lessees who have requested a change to their current rental payments but have not provided supporting documents or have not commenced negotiations in good faith. It may also be used when commercial lessees have not provided evidence to support their claim that they are an "impacted lessee" (within the meaning of the Retail and Other Commercial Leases (COVID-19) Regulation 2021 (NSW)) and either stop paying rent or pay a reduced amount of rent without the lessor's consent. This letter should be sent when the lessee has not provided a statement or evidence that they are an "impacted lessee" within a reasonable time after requested to do so by the landlord.***

# ***Where [ ] appear, please note the instruction and insert the relevant information.***

**[Insert on agency letterhead]**

**[insert date]**

**[insert lessee’s address]**

Dear **[insert lessee’s name]**

**RE:** Your Request for Rent Assistance

**Lease:** Lease between **[insert name of lessee(s)]** and **[insert name of lessor(s)]** dated **[insert date of lease] (Lease)**

**Premises: [insert address]**

We refer to your request dated **[insert date of request]** to vary the lease terms as a consequence of the current impact of the COVID-19 pandemic (**Your Request**).

As you may know, the *Retail and Other Commercial Leases (COVID-19) Regulation 2021* (NSW) (**Regulation**) continues to give effect to elements of the *National Cabinet Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19* (**Code**). The Regulation and the Code (both **attached**) impose a set of obligations and leasing principles for application to retail and other commercial tenancies between lessors and lessees where the lessee is an “*impacted lessee*” (within the meaning of clause 4 of the Regulation in respect of retail shop leases or section 2 of Schedule 5 of the *Conveyancing (General) Regulation 2018* in respect of other commercial leases).

At this stage, we are yet to receive from you documents to support and progress Your Request. The Regulation requires that you provide us with a statement and accompanying evidence to demonstrate that you are an “impacted lessee”. Without supporting documents, my client cannot determine whether you are an “impacted lessee” and so reserves all of its rights to apply to the NSW Office of Small Business Commissioner or other relevant tribunal for resolution or issue a termination notice.

We note that, according to the Regulation, if you fail to provide on time the evidence of and a statement to the effect that you are an “*impacted lessee*” (within the meaning of clause 4 of the Regulation in respect of retail shop leases or section 2 of Schedule 5 of the *Conveyancing (General) Regulation 2018* in respect of other commercial leases) then my client is taken to have complied with its obligations to renegotiate rent and other terms of the lease under the Regulation.

We remind you that there has been no change to your obligation to pay rent under the Lease and that you are still required to pay the full amount of rent in accordance with the terms of the Lease until such time as the parties otherwise agree.

In order for my client to properly consider Your Request and to assess whether you are an “impacted lessee”, please provide the following outstanding supporting documents:

[insert the outstanding documents required, noting that the type of document depends on the circumstances of each particular case, for **example**:

* Evidence of and a statement to the effect that you are an “impacted lessee” within the meaning of clause 4 of the Regulation in respect of retail shop leases or section 2 of Schedule 5 of the *Conveyancing (General) Regulation 2018* in respect of other commercial leases;
* Tax returns or a statutory declaration signed by the director of the company stating, with evidence, the company’s current turnover and turnover during the 2020-2021 financial year (including without limitation whether that turnover was less than $50 million);
* Recognition from the Australian Taxation Office online registration that an application has been submitted for one or more of the following grants: Micro-business COVID-19 Support Grant, COVID-19 NSW Business Grant and the Job Saver Grant;
* Copies of business activity statement reports or other documentation used in support of the application(s) for one or more of the Micro-business COVID-19 Support Grant, COVID-19 NSW Business Grant and Job Saver Grant;
* Confirmation that you are currently eligible for one or more of the Micro-business COVID-19 Support Grant, COVID-19 NSW Business Grant and Job Saver Grant (please provide a copy of the relevant acceptance(s));
* Completed “Rental Payment Proposal Form”;
* Financial statements, management accounts and business activity statements outlining the company’s profits, losses, assets and liabilities for the past 2 years (in particular, for the period including June 2021: month or quarter ending);
* Financial statements comparing the period during which rent relief is claimed with the same period last year;
* BAS statement for the last quarter of this year compared to last year;
* In the instance the business is part of a GST group, include intra-group transactions in turnover;
* A report from a tax agent, accountant or financial adviser providing evidence that the business has faced a substantial reduction in its ability to pay rent as a result of the current impacts of COVID-19;
* Evidence of loss of clients or projects;
* Evidence of anticipated turnover loss for the current quarter and beyond; and
* Any initiatives or arrangements the business has implemented to mitigate its losses stemming from the current impact of the COVID-19 pandemic such as staff working from home and/or details regarding whether staff have been let go or had their hours reduced]

We are committed to complying with the Regulation and Code and, therefore, draw your attention to the following pertinent factors that must be adhered to:

* Lessees requesting rent assistance should demonstrate that they have been impacted by the current impact of the COVID-19 pandemic.
* Lessees are required to provide lessors with evidence of and a statement to the effect that the lessee is an “impacted lessee” within the meaning of clause 4 of the Regulation in respect of retail shop leases or section 2 of Schedule 5 of the *Conveyancing (General) Regulation 2018* in respect of other commercial leases.
* Lessees and lessors must act in an open, honest and transparent manner.
* Any waiver/deferral of rent is to be negotiated by the parties in good faith.
* Lessees and lessors are required to provide sufficient and accurate information and supporting documentary evidence to achieve outcomes consistent with the Regulation and the Code (including, without limitation, evidence or statements referred to above in relation to the lessee being an “impacted lessee”).
* Any agreed arrangements should take into account the impact of the current COVID-19 pandemic on the lessee, with specific regard to its revenue, expenses and profitability.
* A criterion of being an impacted lessee is that the lessee qualifies for one or more of the Micro-business COVID-19 Support Grant, COVID-19 NSW Business Grant and the Job Saver Grant. Accordingly, written evidence (including financial and BAS statements) confirming that you qualify for the relevant grant(s) should be provided when negotiating in good faith any rent assistance.
* Any agreed rent assistance is intended to be temporary and will take into account your particular circumstances.
* A second or subsequent request for rent relief may only be made if the request is made during the prescribed period and the request does not relate to rent or outgoings already agreed to be reduced, waived or deferred.

**[insert this paragraph if the lessee has stopped paying rent or pays a reduced rent without the lessor’s consent]** [We do not believe it is in the spirit of the Code or the Regulation for lessees to unilaterally determine the amount of rent that they will pay, especially without providing all necessary supporting documents and without engaging in good faith negotiations with the lessor. We also remind you of your existing obligation under the Lease to pay the amount of rent that you are contractually obliged to pay, because that obligation has not yet changed.]

Please note that we are not able to provide any legal or financial advice to you and all parties should seek their own independent advice and any agreed changes to the Lease should be reflected in a signed written document prepared by a legal practitioner who is familiar with the Regulation and the Code.

We kindly request that you comply with the Code and Regulation by providing the supporting evidence and documents as soon as possible. Upon receipt of same, we can progress Your Request and obtain instructions from the lessor, with the aim of successfully negotiating an appropriate arrangement agreed by both parties, in good faith, tailored specifically to your particular circumstances.

Failure to provide the supporting evidence and documents may result in my client pursuing any prescribed action against you on grounds of a breach of the commercial lease for failure to pay rent during the prescribed period.

If you wish to discuss this matter further or require additional clarification, please do not hesitate to contact **[insert name of contact person]** on **[insert phone number and/or email address]**.

Yours faithfully

**[insert name and position]**