



Hill Legal
Lawyers and Consultants

WEB FORM COMPLETION GUIDE

The following directions are designed to help you complete the Web Form that will generate Hill Legal's Deed of Rent Relief Agreement. This is to be considered alongside the further directions that are included in the Web Form, but does amount to legal advice.

A reference in this Guide to 'the Legislation' is a reference to the *COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)* and the *COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020*. These are the new laws passed by the Victorian state government which mandate changes to certain 'eligible leases' due to the coronavirus pandemic.

Please ensure that:

- (1) your lease is an 'eligible lease' within the meaning of the Legislation;
- (2) the Tenant has followed the proper process for requesting rent relief from the Landlord; and
- (3) all information submitted to the form is accurate and complete.

If you have difficulty responding to any question, or if you require more specific advice about your lease or your agreement, please call our office on 5976 6500 to discuss before you submit the Web Form.

QUESTIONS 1-5

These questions seek details of the person who is completing the form – this does not need to be the landlord or the tenant. Hill Legal's invoice will be issued in this person's name. If you would prefer our invoice to be issued in the name a company or trust, please call or email us once you have received our invoice.

QUESTIONS 6-14

These questions seek details the parties to the lease.

This information should be found in the **schedule** to your lease. Be careful to correctly identify the Landlord, the Tenant, and any Guarantors of the tenant's obligations under the lease.

Question 7 asks how many entities/people make up the Landlord – if the Landlord is a single company, then your answer should be '1', regardless of how many directors that company has. If the landlord is a couple who own the property together, and they are both listed as the landlord on the lease, then your answer should be '2'.

Where 2 people/entities make up the landlord, please enter the names separately at Q8 and Q8(a), as well as the address of each of these parties at Q8(c) and Q8(d).

Please consider the above when answering Q11-13 re the Tenant and Q14 re any Guarantors of the tenant's obligations under the lease.

QUESTION 15-18

The questions seek details of the current lease agreement.

Question 15 asks for the street address of the property, please be sure to include the suburb and postcode.

Question 16 asks for the start date of the current term of the lease – this is not to be confused with the original start date of the lease – for example, if the lease first commenced on 1 January 2012, and was renewed for a further term starting on 1 January 2017, then your response should be 1 January 2017.

Question 17 asks for the end date of the current term of the lease – when answering this question, please disregard any options that the tenant has to renew the lease – please also disregard any variation to the end of the term that has been agreed as part of this negotiation (this will be addressed in another question).

Question 18 is **particularly important** – your response here should be the amount of monthly rent that the tenant would be paying under normal circumstances (IE, before any agreed reductions or waivers or deferrals). If the tenant pays GST on the rent, be sure that the figure you include is **exclusive of GST**.

If rent is not paid monthly under your Lease then you will need to discuss this with one of our solicitors if this is to be reflected in the Deed.

QUESTIONS 19 & 20

Many tenants have fallen behind on rent and other obligations under their lease since the COVID-19 pandemic began. If the Tenant is in default, the parties should negotiate how this is to be addressed.

While these issues are important, they are outside of the scope of the Legislation and are therefore **not considered** by our Deed. If your agreement includes the rectification of such defaults, Hill Legal can assist you in recording this agreement, either through a more detailed Deed or the drafting of a separate agreement – please contact our office to discuss and obtain advice.

QUESTIONS 21 & 22

Here, the parties are asked to define the "Rent Relief Period" – this is the period for which the rent payable by the tenant will be reduced. Under the Legislation, this period must start no later than 29 March 2020 and must not end before 29 September 2020.

QUESTIONS 23-25

These questions record the parties' agreement as to how the rent shall be reduced during the Rent Relief Period. Your answers to Q23 – Q25 **must add up** to the Current Rent Amount that you have included in response to Q18.

Q21 seeks the \$ amount of rent that the Tenant will pay to the Landlord in each month during the Rent Relief Period.

Q22 seeks the \$ amount from each monthly rental payment during the Rent Relief Period that the Landlord will permanently waive.

Q23 seeks the \$ amount from each monthly rental payment during the Rent Relief Period that will be deferred and repaid over time.

Ensure that each of your answers is listed as a \$ amount (not a percentage) and exclusive of GST. **If the totals of Q23, Q24, and Q25 do not match the amount listed in your response to Q18, then you will be unable to submit the Web Form.**

The Deed assumes that the agreed rent relief will be consistent throughout the Rent Relief Period. If you have agreed rent relief that is flexible or which will change over time, you will require a more detailed document and call us to discuss.

Please also note that the Deed will not be appropriate for any lease under which 'turnover rent' payable. If your lease calls for turnover rent (that is, rent which is determined based on the revenue of the tenant), you will need to discuss this with one of our solicitors.

QUESTIONS 26-28

These questions concern the repayment of the rent that is deferred during the Rent Relief Period.

The Legislation holds that, unless the parties agree otherwise, repayment of the deferred rent:

- must not start before the Rent Relief Period ends; and
- must occur over period which is equal to the longer of (1) 24 months, and (2) the remainder of the current lease term (not including any agreed extension to this period).

The Deed is drafted so that the deferred rent is to be repaid by **equal instalments** over an agreed period of months. If you have made an alternative agreement (for example, repayment to start low and increase over time), you must speak with one of our solicitors if this is to be reflected in the Deed.

QUESTION 29

The Legislation requires that the Landlord must offer the Tenant an extension to the current lease term that is **equal to the length of the Rent Relief Period** – the Tenant is under no obligation to accept this offer and the parties can negotiate an alternative agreement.

If the parties have agreed to extend the current term, Question 29(a) will ask you to insert the new date on which the current term will now expire.

QUESTIONS 30-32

The Legislation holds that, unless the parties agree otherwise, rent cannot be increased during the Rent Relief Period – as such, the Deed allows for the date of the next scheduled rent review/increase to be changed.

Importantly, the Legislation does not prohibit a rent **decrease**, so parties should consider this possibility if the next rent review is scheduled to occur by a market review, or by reference to the Consumer Price Index (CPI).

If you have agreed to vary any rent reviews/increases beyond the next one that is scheduled, you will need to discuss this with one of our solicitors if this is to be recorded in the Deed.

QUESTION 33

The Legislation does not require the Landlord to offer the Tenant a reduction, waiver, or deferral of Building Outgoings (rates, landlord's insurance, owners corporation fees, etc.) or expenses that are payable under the lease – as such, this is not contemplated by the Deed.

If you have agreed to vary the tenant's obligation to pay these sums, you should contact Hill Legal to discuss this with one of our solicitors and have this included in the Deed.

QUESTION 34 & 35

If you answered 'Yes' to either of these questions, you should contact Hill Legal to (1) discuss changes that need to be made to your Deed, and/or (2) clarify your responses to the questions in the Web Form.