

# GUIDELINES

## Night-time Economy Business Support Initiative COVID-19 assistance to commercial tenants

### Program summary

The Victorian Government has announced a \$40 million program, the Night-time Economy Business Support Initiative (the Initiative), to support commercial tenants operating pubs, clubs and restaurant businesses that are experiencing rental payment hardship due to the COVID-19 crisis.

The Night-time Economy Business Support Initiative is part of the Victorian Government's \$500 million Business Support Fund.

Applicants are eligible if they meet all of the following criteria:

- Operate licensed pubs, clubs or restaurants under a general, full club or on-premises liquor licence as a commercial tenant, on tenanted premises as part of a group
- Have an annual turnover of less than \$50 million at each individual premises operating within the group
- Are suffering financial stress or hardship as a result of the COVID-19 crisis
- Do not qualify for the Victorian Government's Commercial Tenancy Relief Scheme, under the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020<sup>1</sup>.

The Initiative will provide eligible grouped businesses with supports, including access to specialist information and business advice, mediation services to manage tenancy issues and support for rental hardship. Applications for the Initiative will be accepted until a date as advised by the Department or until all available funding allocated for the Initiative has been committed.

Further eligibility criteria are outlined below in these guidelines.

Applicants will be required to attest to their eligibility and provide supporting documentation through the application process. Applicants may be subject to audit by the Victorian Government or its representatives.

These guidelines provide the basis for eligibility for support under this Initiative – please read this document before completing the application form.

Completed application forms are to be submitted to the Department of Jobs, Precincts and Regions via the Business Victoria website.

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<sup>1</sup> Details of the Commercial Tenancy Relief Scheme can be found at: <https://www.business.vic.gov.au/disputes-disasters-and-succession-planning/coronavirus-covid-19/coronavirus-business-support/commercial-tenancy-relief-scheme>.

## 1. Standard Eligibility Criteria

1.1 To be eligible for support under this Initiative, Applicants<sup>2</sup> must meet the Standard Eligibility Criteria:

- Operate licensed pubs, clubs and or restaurants on tenanted premises under a general, full club or on-premises liquor licence as part of a group<sup>3</sup>; and
- Employ people; and
- Have an annual turnover of less than \$50 million at each individual premises operating within the group<sup>4</sup>; and
- Hold an Australian Business Number (ABN) and have held that ABN at 16 March 2020 (date of the State of Emergency declaration); and
- Were engaged in carrying out the operation of the business at the tenanted premises in the Australian State of Victoria on 16 March 2020; and
- Have had a reduction in turnover of at least 30% at one or more individual premises operating within the group since 16 March 2020; and
- Do not qualify for the Victorian Government's Commercial Tenancy Relief Scheme, under the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 because the business is part of a group that has an aggregated annual turnover greater than \$50 million (in the past financial year).

1.2 Applicants with businesses that are not registered in Victoria but operate more than one premises in Victoria may apply for support. The Department will review these applications on a case-by-case basis.

## 2. Support Available

2.1 This Initiative will be delivered through the following supports:

- **Specialist Tenancy and Business Advice:** Provide a reimbursement of up to \$20,000 for external expenses incurred to access specialist information and advice on tenancy and other business issues to help manage their tenancy during the COVID-19 crisis.
- **Mediation Services:** free of charge, mediation services to be provided by the Victorian Small Business Commission to assist tenants and landlords to reach a fair and proportionate commercial outcome on rental payments during the COVID-19 period, if tenants and landlords cannot otherwise reach agreement.
- **Funding for Commercial Rental Hardship:** In cases of rental hardship and despite the tenant demonstrating that they have sought to negotiate in good faith with the landlord, Commercial Rental Hardship financial support may be provided of up to \$150,000 per business group to assist tenants to maintain control of the business.

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<sup>2</sup> An applicant is a legal entity that represents a group of businesses. Businesses are those entities where a business name is registered with the Australian Securities and Investment Commission (ASIC). Note that any adverse findings against a business will be taken into consideration.

<sup>3</sup> Meaning as a 'Prescribed group, relationship or connection' defined by clause 7 of the Covid-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020

<sup>4</sup> \$50 million annual turnover is the upper threshold applied to each premise that operates within the business group.

- 2.2 Applicants who are approved for available supports will be notified in writing.
- 2.3 Assistance from a representative of the Department will also be available, providing businesses with information on existing State and Federal Government support programs available during the COVID-19 period.

### **3. Specialist tenancy and business advice**

- 3.1 Eligible businesses groups will be provided with a reimbursement of up to \$20,000 for external eligible expenses incurred after 29 March 2020 for specialist tenancy and business advice to assist tenants resolve leasing and business issues during the COVID-19 period.
- 3.2 Evidence of eligible external expenses incurred on specialist tenancy and business advice after 29 March 2020 will need to be provided, with the total expenses reimbursed subject to the Department's discretion.

### **4. Mediation services**

- 4.1 Eligible businesses will be provided with access to mediation services if tenants at each of the premises within the business group and the landlord cannot otherwise reach agreement. The mediation services will be provided by the Victorian Small Business Commission.
- 4.2 If a business has sought to engage, or has engaged, with landlords in good faith on tenancy and other business issues, the current status and outcomes of negotiations and/or mediation processes should be advised, including whether the negotiations are active, in progress, discontinued or concluded.
- 4.3 The Department and the Victorian Small Business Commission may also engage directly with the landlords on tenancy and commercial rental matters.

### **5. Funding for Commercial Rental Hardship**

- 5.1 Funding for Commercial Rental Hardship may be provided to support eligible business groups that have been impacted by the shutdown restrictions enacted by Government due to COVID-19.
- 5.2 Business groups may be eligible to receive grant assistance for commercial rental hardship to enable tenants to maintain control of the business.
- 5.3 The maximum amount of financial support for commercial rental hardship to be provided will be capped at \$150,000 per business group, with the total financial support subject to the Department's discretion.
- 5.4 Business groups and licensed premises may also be subject to an assessment by an independent party to provide advice to the Department on the extent of rental hardship experienced by the business and to provide recommendations for potential financial support.
- 5.5 Grant funds are to be used for meeting lease related business costs, including rent, utilities, outgoings and other property related expenses.

5.6 Written confirmation of Commercial Rental Hardship funding support will be issued to a business group where the Department determines financial support is appropriate. Any funding support will be paid directly to the Applicant's nominated bank account.

## **6. Evidence of eligibility and compliance**

6.1 Applicants must certify in writing that they meet the eligibility criteria.

6.2 Applicants may be subject to audit by the Victorian Government or its representatives and, if so, will be required to produce evidence: such as financial reports to demonstrate impact and/or allocation and use of funds, at the request of the Victorian Government for a period of four years after the grant has been approved.

6.3 If any information in the application is found to be false or misleading, or grants are not applied for the purposes of operating the businesses in accordance with the terms of funding as set out in these guidelines and the application, the grant will be repayable on demand.

## **7. Other application information**

7.1 Support will be allocated following a successful application process and confirmation of eligibility, including for the receipt of support services and/or a grant to the overall business group.

7.2 Applicants are required to submit an application online via the Business Victoria website ([business.vic.gov.au](http://business.vic.gov.au)). All questions in the application require completion to ensure timely assessment and allocation of support and/or grant payment.

7.3 Applicants may apply for support for one, or all of, their premises that operate within their group in Victoria. Multiple applications on a premises by premises basis will not be accepted.

### **Satisfying the Eligibility Criteria**

7.4 In support of your application, Applicants are required to provide:

- a copy of financial accounts identifying monthly business turnover since March 2019; and
- a copy of the group financial statement for the last financial year<sup>5</sup> showing a turnover of greater than \$50 million;
- a copy of the most recent Business Activity Statement (BAS); and
- a copy of the Liquor Licence for each of the premises applicable as at 16 March 2020; and
- a copy of the Commercial Tenancy Agreement applicable at or immediately prior to 16 March 2020, and any variation(s) to the Rental Payment Schedule agreed with the landlord of each of the licensed premises since 16 March 2020; and
- any other supporting materials.

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<sup>5</sup> Being the 'prescribed turnover' pursuant to clause 5 of the COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020

- 7.5 The Department may seek further information to inform its assessment, including but not limited to, business arrangements and group structure.
- 7.6 It is the Applicant's responsibility to ensure all requested information is supplied to the Department. Failure to do so may result in the application being unsuccessful.
- 7.7 While owners of individual businesses may not be eligible for support through this Initiative, they may be eligible for support through the Victorian Government's Commercial Tenancy Relief Scheme and other programs under the Victorian Government's Business Support Fund.

## **8. Assessment Criteria and Approvals**

8.1 Applications will be assessed in accordance with the eligibility criteria and with reference to the National Cabinet Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19<sup>6</sup>.

### **8.2 Specialist Tenancy and Business Advice**

- All approved Applicants will have access to a reimbursement of up to \$20,000 for eligible external expenses incurred for specialist tenancy and business advice, with the total amount subject to the discretion of the Department.
- Approved Applicants will be advised in writing by the Department.
- Applicants will be required to provide evidence of additional expenses incurred (including invoices) from 29 March to 1 June 2020, to be supported by a statutory declaration.
- Eligible external expenses under the Specialist Tenancy and Business Advice include basic professional services (such as accounting, property, financial, tax and legal business requirements and consultancies), and costs associated with licencing and lease documentation and financing fees.

### **8.3 Mediation Services:**

- This Initiative has been designed to be nimble and responsive to business hardship arising from existing rental agreements.
- All approved Applicants will have access to mediation services.
- Approved Applicants will be advised in writing by the Department.
- The Victorian Small Business Commission will be advised of all successful applications and will be provided access to the application and supporting information.
- For assessment of financial support, Applicants are required to agree to providing the Department with the outcome of any rental negotiations, including those arising from any mediation activities relating to its tenancies.

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<sup>6</sup> The National Code of Conduct can be viewed at: <https://www.pm.gov.au/sites/default/files/files/national-cabinet-mandatory-code-ofconduct-sme-commercial-leasing-principles.pdf>

#### 8.4 Funding for Commercial Rental Hardship

- Funding for Commercial Rental Hardship, of any sum awarded to a maximum of \$150,000, will be at the discretion of the Department, assessed on a case-by-case basis, against the following criteria:

Demonstrated financial impact	Assessment by the Department, as required, taking into consideration, and not limited to, the following: <ul style="list-style-type: none"><li>• the reduction in turnover associated with each premise during the relevant period</li><li>• tenants ongoing obligations under the lease</li><li>• any reduction to rent or outgoings in relation the premises during the relevant period</li><li>• whether a failure to obtain sufficient rent relief compromises each tenant's capacity to fulfil their ongoing obligations under the lease.</li></ul>
Demonstrated outcome of rental negotiations at all impacted premises	Consideration of the status of rental negotiations for tenanted premises, including factors such as: <ul style="list-style-type: none"><li>• evidence of the tenant and the landlord negotiating in good faith with a view to agreeing on the rent relief to apply during the relevant period</li><li>• any rent relief offered or provided by landlords as a response to COVID-19. As part of this, the Department may also consider a landlord's financial ability to offer rent relief.</li></ul>
Ongoing viability of the business group and individual premises	Assessment by the Department, as required, including with reference to the pre COVID-19 period.

#### 9. Other information about this program

9.1 The Department of Jobs, Precincts and Regions reserves the right to amend these guidelines and application terms as required.

9.2 Further information may be found at [business.vic.gov.au](http://business.vic.gov.au) or through the Business Victoria Hotline at 13 22 15.

9.3 Applications will be accepted until a date advised by the department or until available funding allocated for the Initiative has been committed.

9.4 The Department of Jobs, Precincts and Regions will endeavour to notify all Applicants of an outcome within 3 business days of receipt of a complete application.