

QUESTION ON NOTICE

No. 593

asked on 17 June 2020

MS S BOLTON ASKED THE MINISTER FOR EMPLOYMENT AND SMALL BUSINESS AND MINISTER FOR TRAINING AND SKILLS DEVELOPMENT (HON S FENTIMAN) —

QUESTION:

With reference to Queensland's new COVID-19 commercial leasing code—

Will the Minister advise (a) when there will be financial support available for commercial landlords experiencing hardship to alleviate the duress of costs to manage lease negotiations and (b) the reporting/accounting required to adhere with the code?

ANSWER:

To support the implementation of the *National Cabinet Mandatory Code of Conduct – SME commercial leasing principles during COVID-19* (the Code), we have established a temporary Queensland Small Business Commissioner (the Commissioner) under the *COVID-19 Emergency Response Act 2020* (the Act). The Code is given effect by the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (the Regulation), which was enacted on 28 May 2020.

Under the Regulation, the Commissioner is given jurisdiction to assist small businesses and their landlords with informal resolution of COVID-19 affected lease disputes. This includes providing initial information and advisory services, and pre-mediation services to connect tenants and landlords to try to identify solutions prior to progressing to mediation. A mediation service for small business retail leasing matters is provided free of charge and has been instigated to preserve commercial relationships and allow businesses to concentrate on getting back on the road to recovery sooner.

The Commissioner has a dedicated hotline (1300 312 344) and has provided detailed guidance on their website (www.business.qld.gov.au/gsbc) for affected lease disputes. This service empowers both parties, to take steps to successfully negotiate and informally resolve the dispute themselves. The cost benefits of informally resolving leasing disputes is clear – it is free, and time efficient. If the parties are unable to informally resolve, they can progress to a free mediation service administered by the Commissioner.

Prior to establishment of the Commissioner, leasing disputes could be mediated through the Queensland Civil and Administrative Tribunal (QCAT) or the Australian Small Business and Family Enterprise Ombudsman – costing parties up to \$1,500 each. Unlike QCAT or the Federal Ombudsman, the mediation service

administered by the Commissioner is free – the Queensland Government is covering the costs of the mediators and there are no application fees.

While there is no specific financial support available for commercial landlords to alleviate the costs of managing lease negotiations, landlords may be eligible for a variety of COVID-19 support measures offered by the Queensland Government. These measures include land tax relief, payroll tax relief, and the Small Business COVID-19 Adaption Grants.

Section 15 of the Regulation also allows for a landlord to take their own financial position into account when negotiating. This allowance means the financial risk and cashflow impact is shared by both parties to an affected lease in a proportionate and measured manner – one of the objectives of the Code.

Furthermore, by accessing the free informal resolution and mediation service provided by the Commissioner, or the free financial counselling provided by the Small Business Financial Counselling Service, landlords and tenants can avoid future hardship and still be in business when the COVID-19 crisis ends.

The Commissioner has provided guidance on their website (www.business.qld.gov.au/gsbcc) on what information can reasonably be shared during affected lease negotiations, and has specifically stated that “a party should not make any onerous documentation requests, especially if they involve paying a fee to produce or access”. The Commissioner has also provided guidance on how to record an agreement once a settlement has been reached. These measures save both parties, the landlord and tenant, the cost of engaging with accountants, lawyers and other professional services in applying the code.