



22nd April 2020

Rt Hon Jacinda Ardern, Prime Minister
Parliament Building
Wellington, 6160

Dear Prime Minister,

URGENT – COVID-19 – PROTECTING JOBS AND SAVING SMEs FROM FAILURE THROUGH FAIR COMMERCIAL LEASING

This letter is supported and endorsed by all organisations listed below, who have come together to present a united front to Government that represents thousands of businesses employing tens of thousands of New Zealanders.

We applaud the Government for its decisive response to COVID-19, which we expect will give New Zealand the best possible recovery from this crisis. However, despite the efforts to date, a high proportion of our member businesses are at grave risk of failure – even if the country moves to Level 3 on 28 April. One of the main drivers of this is the inability of many businesses to obtain meaningful rent and outgoings relief from their landlords.

We recognise the business support announced so far and note that Ministers mentioned in the Epidemic Response Committee today, that more work is being done on small business support.

We call on the Government to immediately implement the measures described below, in order to more fairly distribute the financial risk and cashflow impact caused by COVID-19. The measures involve no cost to the Crown but will, in our view, likely have just as big an impact as the COVID-19 wage subsidy to save thousands of jobs.

Measures proposed to save thousands of jobs

Specifically, we ask that the relevant Government or Parliamentary bodies take the following action in two stages:

1. **Protection for tenants:** *Immediately* prohibit lease cancellations and debt recovery action by commercial landlords (including calls upon bank guarantees, security deposits and personal guarantees) for a period of six months for commercial tenants who are eligible for the COVID-19 Wage Subsidy due to the impact of COVID-19; and
2. **Fair balancing of financial risk and cashflow impact:** Create a compulsory Code of Conduct for Commercial Leasing that requires *all* landlords to provide a fair proportion of rent relief and outgoings for the duration of the pandemic period and a reasonable recovery period. The code should:
 - specify a methodology for assessing what is a fair proportion of rent relief.
 - delay all rent increases until after the end of the recovery period; and
 - provide a simple dispute resolution mechanism to compel compliance by both landlords and tenants.

The Code should draw heavily upon the recommendations made by Hospitality New Zealand in its letter of 17 April and the Australian Mandatory National Code of Conduct for Commercial Leasing.

Why are these changes necessary?

This issue has been raised with you previously (for example, refer letters from the Franchise Association of NZ dated 2 and 16 April and letters from Hospitality New Zealand dated 1 and 17 April), plus a range of other communications from Associations party to this letter as listed below. We repeat and endorse the concerns expressed previously.

We (and many landlords) anticipated that Government intervention would provide clarity as to how the COVID-19 burden would be shared fairly between landlords and tenants. We hoped for an intervention similar to the Australian Mandatory Code of

Conduct for Commercial Leasing. We are extremely disappointed that the Government has not provided any such assistance. The failure to do so has both emboldened those landlords who refuse to assist tenants and weakened tenants' negotiating positions. This has made it even more difficult for tenants to reduce one of their largest expenses and jeopardises the continuation of those businesses and the employment they provide.

Contrary to what some may perceive:

1. **SMEs have limited cash reserves:** Very few commercial tenants have cash reserves to assist them through this extended lock down and the long recovery period that will follow. The vast majority of SME businesses live week-to-week and generate only modest returns for their owners – certainly not enough to build significant reserves.
2. **Franchising involves small businesses:** Although some franchised brands may appear large, this is an illusion caused by the common brand. In fact, they are a network of small individual businesses with no common ownership. They face the same serious risks as all other small businesses at this time. Furthermore, the franchisor is also at risk, since their income derives from their franchisees – and they are usually also a small business. If the franchisor fails, the entire network will fail too. This would be catastrophic for thousands of New Zealanders who rely upon their network for employment.
3. **Majority of leases offer no rent relief:** Only a minority of leases require a fair rent reduction under current circumstances. There has been a lot of publicity about the rent relief clause in the Auckland District Law Society's more recent form of lease. Most leases do *not* include rent relief. Most tenants are at the mercy of their landlord's goodwill. Even those who do have this clause are highly vulnerable, since there is no clarity as to what is a fair reduction and they cannot afford the dispute resolution mechanisms necessary to force a fair negotiation.
4. **Many landlords not supportive of tenants in pandemic:** Although many landlords, large and small, have been supportive of their tenants, many are not. We attach examples of communication recently received from landlords – the tenants concerned are non-essential retail businesses with zero income.

SME commercial tenants are highly vulnerable as a result of the pandemic. This issue is a “ticking bomb” – many SMEs will not be able to survive seven weeks of Level 4 and Level 3 restrictions without rent relief. Many thousands of jobs are likely to be lost if Government does not introduce new rules to level the playing field for business and to allocate fairly the impact of COVID-19 between tenants and landlords.

Businesses that have no revenue but are forced to pay rents they cannot afford, face the very real prospect of closure. Not only will this leave landlords with no tenants, but many high streets will be bereft of shops, restaurants, office tenants - and the jobs that go with them.

Government must act now

We reiterate that this issue is highly urgent and is an existential issue for thousands of New Zealand businesses. Government can provide meaningful assistance, without incurring further expenditure, by implementing the above two proposals. If the Government truly believes that “He Waka eke noa - we are all in this together” then we implore you to take decisive action now to ensure a fair allocation of the risks and to protect jobs.

We look forward to your urgent response. Representatives of the organisations listed below are available at any time to discuss this issue with you or Government officials. We have nominated Retail NZ – Greg Harford to speak on behalf of all those listed; however, CEOs of the all organisations listed are all available for further comment with respect to their specific areas of expertise.

Correspondence recently received from landlords includes:

- Received from a property manager on 2 April:

my instructions from the landlord are clear and I have conveyed this to you. Rent and OPEX under the ADLS 5th edition must continue and if it does not get paid today, you will be in breach of your lease and I will have no choice but to seek payment from the guarantor

- Received from the same property manager on 20 April:

It does not appear that the government has provided any further advice on the matter.

- Received from a landlord who is offering to defer some rental, but not offering any actual rent reduction (requiring the business to take on debt that may well prove unsustainable), on 20 April:

Whilst you have not confirmed your acceptance of our previous emails sent 31/3/20 and followed up 9/4/20, in good faith and without prejudice we provide you the opportunity to now accept this amended offer. If acceptance and payment are not received by 5.00pm 20thApril then we reserve our rights under the lease.

- Received from a landlord who refuses any form of rent relief and is increasing the rent pursuant to rent review provisions in the lease:

Rent is now 20 days in arrears. We are disappointed that you have chosen this route and formally advise that under clause 5.1 of the lease we now require interest at the default rate of 10% p.a. as per point 12 of the First Schedule to be paid in addition to the outstanding rent. We also advise that a rent increase is due from the 1 May 2020 increasing the monthly rent to \$[redacted] (GST inclusive).

Yours faithfully,

Association Groups as listed below.

Retail NZ Inc

Greg Harford
CEO
M: 027 243 2842

E: Greg.Harfard@retail.kiwi

Represent circa \$62 billion of retail spending.

Hospitality New Zealand

Julie White
Chief Executive
M: 027 557 0056
E: julie@hospitality.org.nz

Directly and indirectly contributes circa \$ 11billion to GDP.

Auckland Business Chamber

Michael Barnett
Chief Executive
M: 027 5631150
E: mbarnett@chamber.co.nz

Baking Industry Association of New Zealand (BIANZ)

Kevin Gilbert
President
M: 027 4859001
E: kevin@bianz.co.nz

Representing the craft baking industry of NZ and have just over 300 members all of whom are independently owned businesses from around the country.

Franchise Association of New Zealand Inc (FANZ)

Robyn Pickerill
CEO
M:0211279706

E: Robyn@franchise.org.nz

A sector with 631 Brands, 35,000 Franchisee Businesses, 124,000 employees and generating \$27.6 billion to GDP.

Restaurant Association

Marisa Bidois
CEO
M: 027 559 7777
E: marisa@restaurantnz.co.nz

Representing 3,600 cafes, restaurants, and takeaways business.

BusinessNZ

Kirk Hope
Chief Executive
M: 027 475 0442
E: khope@businessnz.org.nz

EMA

Brett O'Riley
Chief Executive
Phone. +64 9 367 0900 / +64 21 02709021
E: Brett.Oriley@ema.co.nz

Representing businesses employing more than 20% of New Zealand's workforce.