



# How to claim compensation for disruption caused by landlord's works

You may be entitled to compensation if the landlord of your building has undertaken work that has disrupted your business. Before making a claim it's important to understand the following key points.

## Is a landlord allowed to carry out works that may disrupt my business?

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- Generally, a landlord can carry out works or redevelop their premises if it is permitted by your lease. However they must take all reasonable steps to minimise disturbance to you and your business.
- If you have a retail shop lease, you need to check the disclosure statement given to you at the start of the lease to see whether the landlord advised that work would be undertaken during the term of your lease. (You must be provided with a disclosure statement before entering into a new retail shop lease.)

Read your lease to understand your rights and obligations, as well as those of your landlord, in relation to them undertaking works. This includes checking for any notice period the landlord should give you before starting the works.

## In which situations can I claim compensation from my landlord?

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If your business is disrupted, you could be entitled to compensation including in the following situations:

- if general works are being undertaken by the landlord in the shopping centre or building
- the shopping centre or building is being redeveloped
- the landlord didn't alert you in the disclosure statement that works were planned (or already started).

## How do I claim compensation?

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As soon as you notice works that could affect your business are happening, confirm the details in writing with your landlord. Give them a fixed (and reasonable) time period to remedy the disruption, and state that if the disruption does not stop you will seek compensation for your losses. It could be necessary to send this notice to your landlord to comply with your lease and is a requirement under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (CTA). Contact us if you need help.

Before making a claim you need to:

- gather details of:
  - the works disrupting your business (eg. scaffolding, loss of car parking, entry or exit points closed, obstructions to your business/shopfront and thoroughfares, dust or noise)
  - the impact of the works (eg. difficult for customers to access your business)
  - when the works causing the disruption started
  - dates and times of day when the works are being carried out
  - evidence of the disruption (by taking photos at different times of the day/week)
  - when the disruption ended
- monitor your business activity (eg. track customer numbers)
- analyse your sale levels and any changes
- gather information on how long the disruption is likely to continue (contact the managing agent, the State Planning Commission or your local council)
- consider and identify the likely impact the disruption will have on your business after the works have been completed or the disruption is over
- obtain legal advice to understand your rights and obligations
- determine the amount/type of compensation you want (this could be an amount of money, rent abatement, a rent-free period or a combination of options).

## What can I claim for?

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Your compensation claim can be for a range of losses, costs and damages including:

- lost profits
- loss of customers
- having to sell the business at a loss due to the disruption
- relocation costs
- damage to your fixtures and fittings when removing them to minimise harm during the disruption or if you need to relocate your business
- disruption to services provided to you
- increase in operating expenses.



## What information do I need to support a claim for compensation?

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You need to support your claim by:

- calculating all your trading losses suffered during the works period, this could include comparing:
  - profits during the works with the period immediately before they began and immediately after they were completed or the disruption ended
  - profits for the same trading period in previous years
  - profits in other relevant periods that demonstrate the trading losses
- calculating all your other losses, damages and costs resulting from the disruption to your business
- taking into account that your expenses may also be lower as a result of a reduction in trade (cost of goods sold, casual employees etc.)
- considering future losses and whether they should be part of the claim (this could delay making a claim).

Make sure you have written evidence to support your claim including:

- financial statements prepared by your accountant that show the loss in profits
- a letter from your accountant setting out the financial impact on your business
- quotes for relocation and fit-out costs
- estimates of the reduction in foot traffic (eg. use security camera footage or declarations from nearby tenants).

## What else could affect the amount of compensation I can claim?

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There are many factors to consider before finalising a claim including:

- works taking longer than the landlord expected
- the impact of the works could be more severe than initially expected (eg. closing thoroughfares or access, a reduction in parking spaces or interfering with visibility of your premises)
- unforeseen losses, costs and damages arising at a later time
- increased cash flow requirements during re-development
- temporary increased trade during the works (eg. construction workers visiting your café).



## What do I need to consider before finalising a compensation claim?

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Before reaching an agreement with your landlord about finalising your compensation claim, consider the following:

- the landlord may propose compensation that is unclear or could reduce their liability, such as stating that future claims for further losses relating to these works will not be considered
- the business disruption lasting longer than you were advised or expected and you could need to go back to the landlord regarding further loss and damage at a later date
- discuss with your accountant any GST or other taxation issues that could affect the mix of compensation that would be best for you to agree to
- signing an agreement before all your losses or damage are identified or quantified
- you may agree to relocate to another part of the shopping centre that does not improve your position, or even makes it worse, instead of being paid compensation
- whether the landlord has failed to take steps that would have minimised your loss and damages
- it's important to obtain advice from your lawyer on:
  - the compensation amount and its reasonableness
  - any other available options to deal with business disruptions, for example an injunction to prevent the landlord carrying out the works.

Don't assume compensation is a windfall – you have a right to be compensated for business disruption in the right circumstances.

## How could a landlord reduce the amount of compensation?

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A landlord could seek to reduce your compensation by arguing that your losses, costs or damages were not caused by their works but by other factors such as:

- declining economic conditions
- a reduced demand for your business goods or services (or an overall decline in your industry)
- seasonal downturn
- your skill and ability in managing your business
- local competition.

The landlord could also state that you actually agreed to the works or that your business has or will benefit as a result the works (eg. attracting more customers to the area).

They might offer an initial agreement or temporary benefit to try to reduce your losses, such as a reduction in rent). This could affect your future claims, so seek legal advice before agreeing to any offers.

## Do a final check

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Before agreeing to finalise the compensation offer, check you have considered all the points raised in this guide, including;

- ensuring all losses, costs, damages and valid claims (as well as possible future claims) have been identified and quantified
- considering your overall business interests and the benefits of negotiating an agreement that includes, as well as compensation, other items that could assist your business and its lease, for example:
  - an increase in the lease term or an option to renew as compensation for the time lost in being unable to trade
  - termination of the lease
- obtaining financial advice
- taking legal advice.

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**Note: This information is not a substitute for legal advice.**

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