
Property Law - Retail Leases Act Changes

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Parties to retail leases need to be aware of amendments to the *Retail Leases Act 1994 (NSW)* ("RLA") that have come into effect on 1 July 2017.

Some of the key changes to leasing of retail premises and their effects are identified below:

- **New Lessor Disclosure Requirements**- Requires full disclosure in the lessor's disclosure statement of any obligation of the lessee to contribute to the lessor's outgoings and prevents recovery from outgoings that are not disclosed. This means a lessee will not be liable to pay any amount in respect of any outgoings unless the liability to pay the amount was disclosed in the disclosure statement for the lease.
- **Turnover Rent** - Lessees may find shelter from turnover rent clauses in leases by utilising online transaction which now excludes online sales revenue, except where the goods are delivered from or at the premises (or the Centre) or where the transaction takes place while the customer is at the premises.
- **Minimum 5 year term repealed**- The requirement for a minimum term for retail leases has been removed meaning lessees will no longer have the security provided by legislation of guaranteeing the use of a premises for no less than 5 years. Section 16 of the RLA has been removed.
- **Outgoings**- Definition extended to include management, operation, maintenance or repair of the retail shop building or land, and other fees charged by a lessor, for services provided by the lessor.
- **More compensation for lessees** - Lessors will now need to pay the lessee compensation if they terminate the lease within the first six months, on the basis that the lessor didn't provide a disclosure statement or because the disclosure statement was incomplete, contained information that was materially false or misleading.
- **Additional ground to withhold consent to an assignment** - Where a retail shop lease has been awarded by public tender, a lessor will be entitled to withhold its consent to an assignment if the assignee fails to meet the criteria of the tender.

Other changes to the RLA to be aware of:

- **Agreement for Lease** - The RLA will apply to an agreement for lease in the same way that it applies to a lease. Accordingly, a lessor must ensure that it provides the lessee with a lessor's disclosure statement 7 days before the agreement for lease is entered into. Failure to do so gives the lessee a right to terminate within the first 6 months.
- **Excluded Premises** - Premises used wholly for certain non-retail purposes will be excluded from the scope of the RLA, including ATMs, vending machines, public telephones, children's rides, internet booths, private post boxes and certain storage uses.
- **Market Stalls** - The RLA will **not** apply to stalls in a market unless the market is a

'permanent retail market' (as defined in the Act). The RLA has also been amended to allow the regulations to modify the operation of the RLA NSW in relation to shops in a permanent retail market, including by providing for a mandatory code of conduct for lessors and lessees.

- **Return and Registration of Lease-** The timeframe for the lessor providing a copy of the signed lease to the lessee has been amended from one month to three months. A lease for a term of more than 3 years will need to be registered within 3 months after the executed lease is provided by the lessee, unless there is delay in obtaining head lessor or mortgagee consent or requirements under the *Real Property Act* outside of the lessor's reasonable control.

Note: a retail shop lease is for a term of more than 3 years if, for example, it is for a term of 1 year with an option to renew for a further term of greater than 2 years.

- **Bank Guarantee-** A lessor will now be required to return any bank guarantee within 2 months after the lessee has performed all obligations secured by the bank guarantee.
- **Mortgagee Consent-** Lessors are no longer entitled to recover any expenses involved in the lessor obtaining the consent of the mortgagee of the premises leased.
- **Consent to an Assignment of Lease -** Amendments to clarify the procedure that must be followed by a lessee and lessor in order to obtain the consent of the lessor to an assignment of a retail shop lease and for a lessee to be released from liability to the lessor after assignment (see ss41 and 41A of the Act for details). If the lessor fails to provide the lessee with an updated disclosure statement, the lessee is now required to prepare its own updated disclosure statement which it must complete to the best of its knowledge.
- **Demolition -** The protection given to lessees where their retail shop lease contains a provision allowing a lessor to terminate the lease on grounds of proposed demolition of the property has been extended to a proposed demolition of **any part** of the building, instead of the building in its entirety. The lessor can only terminate provided the proposed demolition cannot be conducted without vacant possession of the premises.
- **Penalty Notice -** There is a greater emphasis on the ability for an officer of the Department of Industry, Skills and Regional Development to issue a penalty notice to a person if it appears that the person has committed an offence under the RLA NSW.
- **Increased jurisdiction of Tribunal -** The monetary limit on the jurisdiction of NCAT will be increased from \$400,000 to \$750,000.

Property Law – More Information

If you would like to discuss the *Retail Lease Act* changes or want more information or advice from a property lawyer, please contact Anna Zdrilic, a Principal in our Commercial and Property Law Group on 02 9806 7425 or email annaz@matthewsfolbigg.com.au.

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