

Commercial leasing of shops which conduct businesses in New South Wales are governed by the Retail Leases Act 1994. This article addresses the practical implications of the Act which favourably protects the lessee's (tenant's) rights.



A. DISCLOSURE STATEMENT

Section 11 of the Retail Leases Act provides that the lessee is to be given a disclosure statement prior to entering into a lease agreement. The statement is to be provided at least 7 days before a retail shop lease is signed.

A disclosure statement is a statement in writing that contains relevant information in the form as set out in Schedule 2 of the Act (see sample below).

If a lessee was not given a disclosure statement or if the disclosure statement that was given to the lessee was incomplete or contained information that at the time it was given was materially false or misleading, the lessee may terminate the lease by notice in writing to the lessor at any time within 3 months after the lease was signed.

B. REVIEW TO CURRENT MARKET RENT

Section 19 of the Act which refers to Reviews to current market rent (a common provision under commercial leases) says that:

A retail shop lease that provides for rent to be changed to current market rent is taken to include provision to the following effect (summarised):

- a. The current market rent of the retail shop is the rent that, having regard to the terms and conditions of the lease would be reasonably expected to be paid for the shop if it were unoccupied.
- b. Rent concessions and other benefits are declared to be relevant matters to be taken into account in the assessment of current market rent.
- c. The value of goodwill created by the lessee's occupation and the value of the lessee's fixtures and fittings are to be ignored for the purposes of the assessment of current market rent.
- d. If the lessor and the lessee do not agree as to what the actual amount of that rent is to be, the amount of the rent

is to be determined by valuation carried out by a person appointed by agreement between the parties to the lease.

A sample of the disclosure statement (as provided in Schedule 2 of the Act) looks like this:

ADVICE TO LESSEES

1. Before signing lease agreements, lessees should ensure they fully understand the documents.
2. If there is any doubt, lessees should seek independent legal advice.

TENANCY DETAILS

Address of Shop/Shop No. Lettable Area (sq.m.)

Permitted Use of Shop

Lease Period / /20 to / /20

Options

Finishes, fixtures, fittings, equipment and services to be provided by the lessor. Lessee has to pay for the finishes, fixtures, fittings, equipment and services to be provided by the lessor: yes / no. If yes, to what extent:

Finishes, fixtures, fittings, equipment and services to be provided by the lessee.

Hours of access to shop outside trading hours.

Date on which shop will be available for occupation by the lessee.

Lessor's requirements as to quantity and standard of fittings in shop.

Rent:

Method of Calculating Rent:

1. Commencement Date
2. Formula
3. Rent Reviews



3. Frequency

4. Nature

OUTGOINGS TO BE PAID BY THE LESSEE

DETAILS OF OUTGOINGS Estimate \$ p.a.

- Air Conditioning/ Ventilation
- Audit Fees
- Building Intelligence & Emergency Systems
- Car Parking
- Child Minding
- Cleaning
- Electricity
- Energy Management Systems
- Fire Protection Gardening
- Gas & Oil Insurance
- Land Tax
- Lifts and escalators
- Local Government rates and charges
- Management Costs
- Pest Control
- Public Address/Music
- Repairs and Maintenance Sinking Fund for Repairs and Maintenance
- Security Sewerage Disposal & Sullage
- Signs Telephones (Public)
- Uniforms
- Water, sewerage and drainage rates and charges
- Others (specify)

Formula for apportionment of outgoings if the lessee is not liable for the total amount

Additional outgoings to be borne by lessee

RETAIL SHOPPING CENTRE DETAILS

- Name of Retail Shopping Centre
- Address of Retail Shopping centre
- Suburb / Town Postcode
- Number of Retail Shops in Retail Shopping Centre
- Total Lettable Area (sq.m.)

- Parking Facilities at Retail Shopping Centre
- Number of bays for customers _____
- Number of bays for lessees _____
- Facilities and services provided by the lessees

Changes or developments planned by the lessor for:

Retail Shopping Centre No Yes Attach details

Surrounding Roads No Yes Attach details

Core trading hours (the times when retail shops in the shopping centre are required to be open for business)

Tenant mix (attach floor plan showing existing and proposed tenancy mix of the precinct and the location of common areas and kiosks within the precinct) from time to time, subject to agreements or representations details of which are given in this Disclosure Statement.

Tenant Association No Yes

Attach details of constitution, voting rights, contributions

Contribution to retail shopping centre advertising and promotion
No Yes

Lessee's contribution \$ per annum

DETAILS AS TO INTEREST OF LESSOR

Is the Lessor: Owner of the shop or Lessee of the shop

Give details of any rights and obligations of lessor under that lease that may affect the shop.

DETAILS AS TO AGREEMENT OR REPRESENTATIONS

Give details of any other agreements between lessor and lessee, or representations made by lessor or lessee including those relating to exclusivity or limitations on competing uses.

Comasters can advise lessors (landlords) or lessees (tenants) of their respective rights. We are able to prepare (or review) comprehensive lease documents, and also negotiate on behalf of clients.

© Comasters 2001 **Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

CONTACT US

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