

RETAIL LEASING REFORMS

The Retail Leases Amendment (Review) Bill 2017 was passed by NSW Parliament on 21 February 2017, amending the *Retail Leases Act 1994 (NSW)* ("the Act") and came into effect on 1 July 2017.

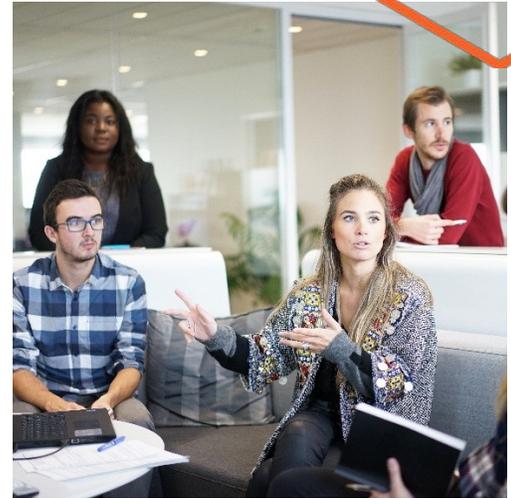
The following key reforms to the Act may affect you or your business:

① The Lessor's Disclosure Statement

The Act requires the lessor to provide the lessee with a Lessor's Disclosure Statement at least seven (7) days before the lease is entered into. The lessee is entitled to terminate

the lease within the first six (6) months if the lessor fails to meet this obligation or provides an incomplete, misleading or false disclosure statement.

If this occurs, the lessee is entitled to compensation from the lessor for costs reasonably incurred by the lessee in connection with entering into the lease.



The Amending Legislation increases transparency and operation efficiency, providing for many changes that are beneficial to both lessors and lessees

② Amending the Lessor's Disclosure Statement

The lessor and lessee can now amend the Lessor's Disclosure Statement in writing before and after the lease is entered into, with the lease coming into effect on the date specified by the amendment.

③ Liability to pay disclosed outgoings

The lessee's liability for outgoings is now limited to the outgoings which are disclosed

in the lessor's disclosure statement. Accordingly the lessor needs to include details of all outgoings it intends to recover from the lessee during the term of the lease in the lessor's disclosure statement.

④ NCAT's new jurisdiction

NSW Civil and Administrative Tribunal ("NCAT") now has jurisdiction to determine claims up to \$750,000 (the previous limit was \$400,000). NCAT also has the ability to amend the Lessor's Disclosure

Statement under specific circumstances (e.g. to correct an error or omission, give effect to intention of the parties, etc).



RETAIL LEASING REFORMS

Understanding the key amendments

What are the significant changes to the Act?

⑤ Mandatory registration

If the term of a retail lease is for more than three (3) years or the parties have agreed that it should be registered, the lessor must lodge the lease for registration at the NSW Land and Registry Services within three (3) months of receiving the executed lease from the lessee.

If there is a delay in obtaining consent from the mortgagee or head lessor, then, the lessor may seek to extend this three (3) month period, provided that the delay is not caused by the lessor's failure to make reasonable efforts to obtain consent.

The lessor must execute the lease and return the fully executed lease to the lessee within three (3) months from the date when the lessor (or lessor's solicitor or lessor's agent) received the lease executed by the lessee.

⑥ Return of bank guarantee

The lessor must return the bank guarantee to the lessee within two (2) months after

the lessee has fulfilled its obligations under the lease.

⑦ Turnover rent and online sales

Any revenue from online sales may not be included in turnover rent except for revenue obtained from online sales delivered or provided from the premises or where the sale takes place while the customer is at the premises.

⑧ Penalty notices

An officer of the Department of Industry, Skills and Regional Development can issue a penalty notice to a person if it appears that the person has committed an offence under the Act.

To avoid a determination by the Court, the person can pay the amount specified in the penalty notice.

⑨ Mortgagee consent fees

The definition of 'lease preparation expenses' has been amended to include mortgagee consent fees.

Accordingly the lessor may not recover from the lessee

any expenses that arise in connection with obtaining mortgagee consent.

⑩ No minimum five-year term

Retail leases are no longer required to be for a minimum term of five (5) years.

⑪ Demolition

Requirements detailed in the Act with regards to demolition of a building now apply to the demolition of 'any part of the building'.

The lessor may only terminate the lease if the proposed demolition cannot be practically carried out without vacant possession of the premises.

⑫ Police checks

Retail shops may require police checks and clearances for employees by including a provision in the lease and obtaining approval in writing from the Registrar.

To learn more about the retail leasing reforms discussed above
please contact the authors on 02 9265 3000

31 January 2018

Debbie Tran (Associate)

Atra Ardekani (Lawyer)

Eakin McCaffery Cox Lawyers

Level 28, 1 Market Street, SYDNEY NSW 2000

PO Box Q1196, QVB NSW 1230

DX 1069 SYDNEY

TEL: 02 9265 3000

FAX: 02 9261 5918