

RSLA Amendment Act 2016

Summary of more important changes to the Retail Shop Leases Act (RSLA) by the Retail Shop Leases Amendment Act 2016

Retail shop lease

1. A lease of premises with a floor area of more than 1,000m² is not a retail shop lease.
2. A lease of non-retail businesses located in a multilevel building will not be a retail shop lease if the level of the building in which the premises is located contains 25% or less retail area.
3. A lease of non-retail businesses located in a single level building will not be a retail shop lease if 25% or less of the building is retail area.
4. Leases or licences of an information facility, telecommunications equipment, automatic teller machine, vending machine, advertising display, storage or parking will not be retail shop leases, if the premises were not leased or licensed, they would be premises within a common area of a retail shopping centre.

Date retail shop lease is entered into

5. A retail shop lease is now entered into on the earliest of the following dates:
 - (a) the first date by which the lease is signed by all of the parties to the lease;
 - (b) the date the lessee enters into possession of the retail shop under the lease; or
 - (c) the date the lessee first pays rent under the lease, other than as a deposit to secure the premises for the lease.

Lessor/lessee/assignor/assignee disclosure

6. A lessee is required to give a disclosure statement to the lessor at least seven days before the lessee enters into a lease.
7. Lessors are to provide disclosure to the lessee on the exercise of an option to renew by a lessee, with the lessee being able to withdraw from the option within 14 days of receipt of the disclosure, without the need to give any reason or withdrawal.
8. Lessees may waive the benefit of disclosure periods, but not the obligation for the lessor to give a disclosure.
9. Lessors are to provide an updated disclosure upon request to enable lessees to give a disclosure statement on the grant of a sublease or licence.
10. An assignee has the ability to waive the disclosure period for an assignor disclosure statement.

Rent and outgoings

11. Market rent reviews are to be conducted by specialist retail valuers on an effective rent basis.
12. Where a lessee exercises its right under the RSLA to have an early determination of the market rent before exercising an option to renew, the period for the lessee to exercise the option will end 21 days after the market rent is agreed or determined, even if that date extends beyond the expiry date of the retail shop lease.
13. Outgoings may only be recovered from a lessee if the lease specifies:
 - (a) the outgoings payable by the lessee;
 - (b) how the outgoings will be determined and apportioned to the lessee; and
 - (c) how the outgoings may be recovered by the lessor.
14. Outgoings estimates and annual audited statements of outgoings will need to provide a detailed breakdown of the administration costs of running the centre and fees to be paid to any centre management entity.
15. A lessee has the right to withhold payment of outgoings until the estimate or audited statement is given by the lessor.
16. A lessor will not be able to include areas within a common area of the centre used for a prescribed purpose when calculating the total area of the centre for the purposes of calculating the apportionable outgoings payable by the lessees.
17. If a lessee is required to pay turnover rent, the RSLA no longer obliges the lessee to give a lessor monthly turnover certificates and annual audited statements of turnover. Lessors will need to specifically include these obligations within their leases and provide the timing and delivery of certificates and statements by the lessees in the leases.
18. If a retail shop lease requires the lessee to pay amounts to the lessor for promotion and advertising, the lessor must make available to the lessee a marketing plan and an audited annual statement within specified time periods.

Costs

19. Where lease negotiations have been finalised and a lessee requests the lessor to produce a lease for execution, if the lessee subsequent to that date does not proceed with the lease, the lessor can recover the fees for preparation of the lease from the lessee.
20. Lessors are now not permitted to recover mortgagee consent fees from lessees.

Compensation

21. The compensation provisions now clarify that a lessor is not liable to a lessee for compensation for business disruption where the lessor's actions are in response to an emergency.
22. A lessee is required to give a lessor written notice of the loss or damage suffered as soon as practicable after it has occurred, failing which the delay can be considered when deciding the amount of compensation payable to the lessee.

23. A retail shop lease may limit a lessee's claim for compensation if a business disturbance occurs during the first year of the lease and, before the lease was entered into, the lessor gave the lessee written notice of the potential business disturbance.
24. The compensation provisions will now apply to a lessee who is holding over under an expired retail shop lease with the lessor's consent.

Other matters

25. Guarantors of a lessee are now released from liability upon the assignment of a retail shop lease in addition to the lessee when the conditions as set out in the RSLA have been satisfied.
26. Any provision in a retail shop lease requiring a lessee to refurbish or refit the premises will be **void** unless general details of the nature, extent and timing of the refurbishment or refitting required is set out.
27. The relocation provisions of the RSLA will apply to all relocations, not just those where vacant possession is required to facilitate a refurbishment, extension or redevelopment of the centre.

The abovementioned changes do not comprise all the changes in the *Retail Shop Leases Amendment Act 2016*.

If your documents and/or procedures require amendment or the changes require further discussion, please contact:



Denis Stephenson LL.B, B.Comm.
Special Counsel
Commercial and Property
Anderssen Lawyers

Phone: 07 3234 3107

Email: denis@anderssens.com.au

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