RETAIL SHOP LEASES AMENDMENT BILL 2015: THE HIGHLIGHTS

Date: 18 May 2016

Real Estate Alert

The *Retail Shop Leases Amendment Bill 2015 (Qld)* (Bill) was passed by the Queensland Parliament on 10 May 2016. The Bill gives effect to outcomes from the statutory review of the *Retail Shop Leases Act 1994* (Act). Key objectives of the review were to improve the Act's efficiency and effectiveness, reduce red tape and compliance costs, address imbalances and align the Act with the retail tenancy laws in other Australian jurisdictions.

The changes to the Act are expected to take effect six months after the Bill receives royal assent.

Landlords should review their standard lease documents for compliance with the changes to the Act.

The key amendments to the Act include:

LEASES EXCLUDED FROM THE ACT

Leases will not be subject to the Act if the Premises are 1,000m^2 or more, regardless of whether the tenant is a publicly listed corporation. This brings the Act in line with the current position in New South Wales, Western Australia, Tasmania and the Northern Territory.

Commercial leases in a retail shopping centre will also be excluded from the Act if the permitted use is as a non-retail business and is either:

- in a multi-level building, and the level which the premises is on contains 25% or less retail area
- is located in a single level building and 25% or less of the building is retail area.

ATMs and vending machines will now be specifically excluded from the Act.

DISCLOSURE STATEMENTS

The Bill includes a framework for tenants to waive the requirement for a landlord to provide a Disclosure Statement by the disclosure date (but, a Lessor Disclosure Statement must still be provided before the Lease is entered into).

Sublessors and franchisors may request that a landlord provide a Disclosure Statement. The landlord must comply within 28 days of receiving the request. The sublessor/franchisor must pay the landlord's reasonable costs.

A Lessor Disclosure Statement will now be required when an existing tenant exercises an option to renew, unless the tenant gives the landlord a waiver notice when the tenant exercises the option. The Lessor Disclosure Statement must be given within seven days after the landlord receives the tenant's notice exercising the option.

©2005-2026 K&L Gates LLP. All Rights Reserved.

The tenant may give the landlord notice withdrawing the option exercise within 14 days after receiving the Lessor Disclosure Statement. The tenant may also terminate the lease within six months after entering into the option lease if the landlord does not comply with its disclosure obligations.

TURNOVER INFORMATION

The Bill removes the statutory requirement for tenants to provide turnover certificates and registered auditor's statement when turnover rent is payable. Landlords will need to ensure that these requirements are contained in the lease.

MARKET RENT ON COMMENCEMENT OF OPTION PERIODS

If rent is to be reviewed to market on the commencement of an option lease, the tenant does not need to exercise the option until 21 days after the tenant receives notice of the current market rent determination.

ASSIGNMENTS

An Assignor Disclosure Statement must now be provided to an assignee at least seven days before the earlier of the assignee entering into a contract to purchase the business operated from the premises, or the day the landlord is asked to consent to the assignment.

Guarantors will now be released upon assignment, provided the disclosure obligations have been complied with.

REFURBISHMENT

A tenant is only liable to refurbish the premises where the lease gives details of the nature, extent and timing of the refurbishment. A general obligation on the tenant to "refurbish when required to do so by the landlord" will likely be unenforceable.

OUTGOINGS

A landlord's annual estimated and audited statement of outgoings must include a breakdown of centre management fees.

If a landlord does not provide the annual estimated and audited statement of outgoings within the timeframes required, the tenant may withhold outgoing payments until the landlord provides them.

PROMOTION FUNDS

The landlord must make available to the tenants a marketing plan detailing the landlord's proposed advertising/promotion expenditure. The marketing plan must be provided to the tenant at least one month before the start of each accounting period if the tenant is required to contribution toward a promotion fund. Landlords may publish the marketing plan on a website.

©2005-2026 K&L Gates LLP. All Rights Reserved.

LANDLORD'S COSTS RECOVERABLE FROM TENANTS

The Bill includes provisions for a landlord to recover lease preparation costs where the tenant has negotiated, but does not proceed with, a lease.

Landlords are now prohibited from recovering the landlord's mortgagee's consent fees from tenants.

We will issue another news alert as soon as the Bill receives royal assent. In the meantime, please contact the K&L Gates Real Estate team if you have any queries or if we can be of assistance.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.