

NSW Retail Leases Amendment Bill 2017 (Summary)

The Amendment Bill was passed in Parliament on the 21/02/2017 which effectively seeks:

to require the registration of a retail shop lease that is for a term of more than 3 years (or that is required by the terms of the lease to be registered) and to require lodgement for registration within 3 months after the lease is executed,

to exclude premises used wholly for certain non-retail purposes from the scope of the Act (including ATMs, vending machines, public telephones, children's rides, internet booths, private post boxes and certain storage uses),

to make it clear that a lessor is not entitled to recover any expenses involved in the lessor obtaining the consent of the mortgagee of the premises leased,

to remove the requirement for a 5-year minimum term for retail shop leases,

to require a lessor to return a bank guarantee to the lessee within 2 months after the lessee has performed all obligations secured by the bank guarantee,

to revise and clarify the definition of **outgoings** in the Act and to extend the definition to include fees charged by a lessor for services provided by the lessor,

to increase the monetary limit on the jurisdiction of the Civil and Administrative Tribunal (**the Tribunal**) for claims arising under the Act from \$400,000 to \$750,000,

to expand the grounds on which the Tribunal can order the rectification of a retail shop lease (currently limited to when the parties consent) to include correction of a mistake, giving effect to the intention of the parties or reflecting the actual disclosure of information between the parties, and to extend the rectification power to rectification of a disclosure statement,

to provide for specialist retail valuers (who determine current market rent when the parties cannot agree) to be appointed by the Registrar rather than the Tribunal, and to make it clear that experience and training requirements for specialist retail valuers can be prescribed by the regulations,

to clarify the procedure to be followed by a lessee to obtain the consent of the lessor to an assignment of a retail shop lease and protection from liability to the lessor after assignment,

to provide that for the purposes of the determination of rent by reference to turnover, turnover does not include turnover from online transactions (with limited exceptions),

to provide that a lessee cannot be required to provide information to the lessor about turnover from online transactions (with limited exceptions),

to remove an unnecessary exception from the Act for premises in an office tower that forms

[this is an extract from the Explanatory Notes to Parliament, highlighting the Key Lessee/member benefits from these reforms]

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