



firstnational
COMMERCIAL | Treeby

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265 Maroondah
Highway
(PO Box 434)
Ringwood Vic 3134

Contact
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E commercial@treebycommercial.com.au
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Re: _____

I acknowledge receiving a "Draft" copy of the Lease Agreement and a "Victorian Small Business Commissioner – Information Brochure" for the above mentioned premises.

Signed:

Name in Full:

For and on behalf of:

Date: / / 20.....

COMMERCIAL LEASE APPLICATION FORM

Property:

Applicant:

Applicant's address:

Contact:

Telephone: Email

COMPANY DETAILS

1. Full registered name of company, registration number and date of incorporation:

2. Registered address of company:

.....

ACN: ABN:

3. Principal trading address of company: (if same as (2) answer 'as above')

.....

4. Postal Address:

5. Trading Name:

6. Proposed Use of Premises:

7. Applicants (or Company Directors):-

Surname: Surname:

Given Names: Given Names:

Address: Address:

Licence No: Licence No:

DOB: DOB:

Phone: Phone:

Mobile: Mobile:

Email: Email:

LEASE DETAILS

Commencing rent per calendar month: \$ (excluding GST)

Commencing Date of Lease:

Commencing Date of Rental:

Lease Term: Options:

Rent Reviews: Frequency (eg. Annually).....

Security Deposit: \$

PREVIOUS LEASE/RENTAL DETAILS

Address (1):

Landlord/Agent:

Phone: **Contact**

How long rented**years** **Rental: \$** **(PCM / PA)**

Address (2):

Landlord/Agent:

Phone: **Contact**

How long rented**years** **Rental: \$** **(PCM / PA)**

REFERENCES

Accountant Details (In case of a Company – External Accountant)

Name of Business:

Contact Person: **Telephone:**

Financial Reference (1)

Name of Business:

Contact Person: **Telephone:**

Business Reference (1)

Name of Business:

Contact Person: **Telephone:**

Business Reference (2)

Name of Business:

Contact Person: **Telephone:**

Business Reference (3)

Name of Business:

Contact Person: **Telephone:**

DECLARATION

I/We

of

hereby declare that the information provided in the 'Commercial Lease Application'
Form to be true and accurate in ever aspect.

.....

Signature of Applicant

Dated

STATEMENT OF POSITION
AS AT/...../.....

RE:

<u>ASSETS</u>	\$	<u>LIABILITIES</u>	\$
Bank:		Overdraft	.....
Trading account	.....	Creditors & bills	
Savings Account	.....	Payable	.....
Building Society	.....	Mortgage Loans	
Other .....	.....	(1)	.....
Other .....	.....	(2)	.....
		(3)	.....
Residential Property		Other Liabilities	
.....	.....	(Details)	
	
Investment		.....	.....
(1).....	.....	.....	.....
(2) .....	.....	.....	.....
(3) .....	.....	
Shares			
.....		
.....		
.....		
Motor Vehicle			
.....		
.....		
Other			
.....		
.....		
.....		
Furniture & Household			
Effects	.....	
<u>TOTAL ASSETS</u>	\$	<u>TOTAL LIABILITIES</u>	\$

SURPLUS OF ASSETS OVER LIABILITIES **\$.....**

NOTE: IF APPLICANT IS A COMPANY A STATEMENT OF POSITION (ASSETS & LIABILITIES STATEMENT) TO BE PROVIDED FOR EACH DIRECTOR

Signature of Applicant **Dated**/..../.....

**PRIVACY ACT 1988
Collection Notice**

The personal information the prospective tenant provides in this application or collected from other sources is necessary for the Agent to verify the Applicants identity to process and evaluate the application and to manage the tenancy.

The personal information collected about the applicant in this application may be disclosed during the course of the tenancy for the purpose for which it was collected, to other parties, including the Lessor, referees, institutions, tradespeople, other agents, third party operators of tenancy reference databases and other third parties as required by law. Information already held on tenancy reference databases may be disclosed to the agent and/or lessor. The Agent may also disclose information to other parties on the internet.

If the Applicant enters into a Tenancy Agreement and if the Applicant fails to comply with their obligations under that agreement, that fact and other relevant information collected about the Applicant during the course of the tenancy may also be disclosed to other parties, including those referred to above. The Agent will only disclose information in this way to other parties to achieve the purposes specified above or as otherwise allowed under the Privacy Act 1988.

If the Applicant would like to access his/her personal information held by the Agent, they can do so by contacting the Agent at the address and contact numbers contained in the Application. The Applicant can also correct this information if it is incomplete or out of date.

If the information is not provided, the Agent may not be able to process the application and manage the tenancy.

I have read and understand the above Application and Privacy conditions.

Current Address

Phone No:

APPLICANT SIGNATURE DATE:



COMMERCIAL 143

The Real Estate Institute of Victoria Ltd.
ABN 81 004 210 897

Commercial Lease

THIS LEASE is made between the party named and described as the Lessor in Item 1 of the Schedule **AND** the party named and described as the Lessee in Item 2 of the Schedule and records that the Lessor leases to the Lessee the premises described in Item 3 of the Schedule ('the Premises') together with the Lessor's fixtures and chattels described in Item 4 of the Schedule to be held by the Lessee for the term described in Item 5 of the Schedule ('the Term') from the date described in Item 6 of the Schedule ('the Commencement Date') at the rental described in Item 7 of the Schedule.

Rental

1. **THE LESSEE COVENANTS AND AGREES** with the Lessor as follows:-

(a) To pay the rental in advance and without deduction on the dates provided in Item 8 of the Schedule to the Lessor or to the duly appointed Agent of the Lessor referred to in Item 9 of the Schedule ('the Agent') or to such other person at such other address as the Lessor may from time to time direct in writing.

Outgoings

(b) To pay or reimburse the Lessor during the Term in respect of the Premises -

(i) All municipal and water, drainage and sewerage rates, charges and levies;

(ii) All land tax calculated on the basis that the Premises or the building(s) of which the Premises forms part (the Building) is the only land owned by the Lessor unless the Act applies;

(iii) All gas, electricity, telephone, sewer disposal and water consumption charges;

(iv) Any body corporate levies;

(v) The cost of maintaining and servicing any air conditioning, heating and other plant and equipment; and

(vi) Any other outgoings whatsoever which are now or may at any future time be assessed charged or payable by the owner or occupier of the Premises,

unless expressly excluded in Item 10 of the Schedule provided that:

(A) If any outgoings assessed apply partly to a period outside the Term, they must be apportioned between the Lessor and the Lessee;

(B) If any outgoings are not separately assessed or charged against the Premises, then the Lessee must unless some other way of apportioning outgoings is described in Item 11 of the Schedule, pay a proportionate part calculated on the proportion which the lettable area of the Premises bears to the lettable area of the whole of the land or the Building to which the assessment or charge relates. However, if the Act applies to the Premises the Lessee must pay that proportion of the Building outgoings -

(i) that benefit all premises in the Building -
the proportion that the lettable area of the Premises bears to the lettable area of the Building as stated in Item 11A of the Schedule;

(ii) that benefit the Premises and only some of the other premises in the Building -
the proportion that the lettable area of the Premises bears to the lettable area of all premises that together share the benefit of the outgoing;

(iii) that benefit only the Premises - 100%;

(C) All the above outgoings must be paid by the Lessee within seven days of the due date for payment and if payable by the Lessor must be reimbursed by the Lessee within seven days of demand;

(D) If the Act applies to this Lease these outgoings must be calculated so as to comply with the Act (including the exclusion of land tax).

**Building
Operating
Expenses**

- (c) To pay or reimburse the Lessor within seven days of demand a proportionate share of all costs and expenses paid or incurred by the Lessor in operating, managing, equipping, lighting, repairing and maintaining the Building including, without limitation, toilets and sanitary services, cleaning, fire protection, insurance premiums in respect of liability for property damage, fire, workers' compensation and public liability and other risks which the Lessor shall reasonably require. The Lessee's proportion of the costs and expenses must be determined in the same manner as the outgoings referred to in Clause 1(b) unless -
- (i) Some other way of apportioning the costs and expenses is described in Item 12 of the Schedule; or
 - (ii) The Act applies to this Lease, in which case the Lessee's share of the costs must exclude any expenses and other items which the Lessor is prohibited from passing on to the Lessee under the Act.

Insurances

- (d) (i) To reimburse to the Lessor all premiums and other charges paid by the Lessor under the insurance policies effected by the Lessor with respect to the Premises including fire insurance on all improvements on a replacement and reinstatement basis and such other risks as the Lessor shall require and whether or not the risk is one in respect of which insurance is commonly obtained at the Commencement Date of this Lease. These insurances shall include plant and machinery breakdown insurance, public liability insurance, loss of rent and consequential loss insurance and any other insurance effected by the Lessor in relation to any risk relating to the Lessor's ownership or interest in the Premises. The Lessor shall be entitled to insure for such amounts and with such extensions and exclusions as the Lessor shall think fit provided that if the Act applies the Lessor shall not be entitled to recover any premiums or other charges which the Lessor may be prohibited from claiming from the Lessee under the Act.
- (ii) To effect and keep current during the occupation by the Lessee of the Premises a public liability policy in the joint names of the Lessor and the Lessee for an amount of not less than \$10million or such higher amount as the Lessor may from time to time reasonably determine. The policy must be with an insurer reasonably approved by the Lessor and the Lessee must produce evidence of the cover within seven days of request by the Lessor.

**Not to Void
Policies**

- (e) Not to do or permit anything to be done in the Premises or the Building which may result in any policy of insurance relating to the Premises or the Building becoming void or voidable or which may allow an insurer to decline a claim whether under any condition or exclusion contained in the policy or policies or otherwise or which may result in the premium being increased. Where any premium is increased the Lessee must pay to the Lessor or the Agent all additional premiums payable by the Lessor.

Repairs

- (f) To keep the Premises, including the faces of the external and internal walls which comprise the boundary of the Premises, together with any additions in good and tenantable repair and to make good any damage caused to the Premises during the Term, fair wear and tear and damage by fire or other cause not attributable to the negligence of the Lessee always excepted. The Lessee must also thoroughly clean the inside and outside of all windows at least once in every three months and clean and keep free of debris all drains, waste pipes, gutters, spoutings, rainheads and downpipes which exclusively serve the Premises.

Maintenance

- (g) Not without the approval in writing of the Lessor or the Agent, to employ any person in the repair or maintenance of the Premises or to effect any structural alterations, additions or repairs or to install or remove any fixtures and fittings on the Premises.

**Lessor's
Fixtures
and Chattels**

- (h) To keep the Lessor's fixtures and chattels clean and in good and tenantable repair and to make good any damage to them, fair wear and tear and damage by fire or other cause not attributable to the negligence of the Lessee always excepted. Subject to those exceptions the Lessee must replace with a similar article of at least equal value all fixtures and chattels that may be destroyed, lost or so damaged as to be incapable of complete reinstatement to their former condition and must not permit any Lessor's fixtures and chattels to be removed from the Premises without the previous written consent of the Lessor, except for the purpose of necessary repairs.

- Damage to Installations** (i) To unblock or repair any sewers, drains, wash basins, sanitary apparatus, washing facilities or mechanical installations in or serving the Premises which may be blocked or damaged and which the Lessee agrees were neither blocked or damaged at the Commencement Date.
- Alterations and Additions** (j) Not to make or permit any structural alterations, additions or repairs to the Premises and not without the prior written consent of the Lessor or the Agent (which consent may be given to conditions including, without limitation, the type of materials to be used) to install any partitions, fixtures or fittings or to alter or remove any existing partitions, fixtures or fittings or to redecorate the Premises.
- Notice of Accidents** (k) To promptly give notice in writing to the Lessor of any accident to or defect in the Premises and/or the Building or in the water, sewerage or gas pipes or electric light fittings installed in the Premises and/or the Building.
- Inspection and Remedy of Default** (l) To permit the Lessor and the employees, agents, consultants and contractors of the Lessor with or without workmen and others at any reasonable time during normal working hours or immediately in the case of emergency, to enter and inspect the Premises and examine their condition. The Lessee must repair and make good any damage to the Premises for which the Lessee is liable under the covenants contained in this Lease within 14 days or such shorter period as is reasonable of written notice being given by the Lessor or the Agent. If the Lessee does not comply with the notice, the Lessor and any workmen and others may, without prejudice to the right of re-entry contained in this Lease, enter the Premises and undertake any repairs at the expense of the Lessee and the expense of the repairs together with interest calculated from the date or dates of expenditure must be repaid by the Lessee to the Lessor on demand.
- If the Act applies to this Lease then the above Clauses from 1(f) through to 1(l) shall be modified as necessary to comply with the Act.
- Reinstatement and Delivery up of the Premises** (m) At the expiration or earlier termination of the Term, to remove any Lessee's partitions, fixtures and fittings and to reinstate the Premises to their original condition as at the commencement of the Lessee's occupancy of the Premises and to make good any damage to the Premises to the reasonable satisfaction of the Lessor. The Lessee must also deliver up possession of the Premises to the Lessor together with all Lessor's fixtures and chattels in accordance with the Lessee's covenants contained in this Lease.
- Signs** (n) Not to erect or permit any writing, sign, advertisement or notice to remain on any part of the Premises or the Building without the prior written consent of the Lessor or the Agent, which consent shall not be unreasonably withheld. At the expiration or earlier termination of the Term of the Lease, the Lessee must paint out or remove any writing, sign, advertisement or notice to the satisfaction of the Lessor or the Agent.
- Use of Premises** (o) (i) Except with the prior written consent of the Lessor, not to use or permit the Premises to be used for any purpose other than the purpose specified in Item 13 of the Schedule.
(ii) Not to use or permit the Premises or the Building to be used for any illegal, noisy, noxious, improper, immoral or dangerous purpose nor to allow or keep any animal or bird in the Premises or about the Building nor to use or permit any radio, television or other sound producing apparatus to be used in or about the Premises in a manner which might interfere with or annoy occupiers of other premises in the neighbourhood.
(iii) The Lessee acknowledges that no promise or representation has been given by the Lessor or the Agent as to the suitability of the Premises or any Lessor's fixtures or chattels for any purpose or use which may be intended by the Lessee.
- Auction Sales etc.** (p) Not without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, to conduct or permit any person to conduct on the Premises any auction or any teaching, practice or rendering of music classes or classes of any kind.

Common Areas

- (q) Not to cause or permit any common areas or service facilities associated with the Premises or the Building to be obstructed or untidy.

Heavy Weights

- (r) Not to bring into the Building or permit on the Premises any machinery or other articles of a weight or nature which may damage the Premises or the Building.

Compliance with Orders

- (s) To observe and comply with all provisions and requirements of all Acts, rules, regulations and by-laws so far as they relate to the Building and the Premises or their use and the rules and regulations made by the Lessor under this Lease provided that the Lessee must not be required to make structural alterations or additions to the Premises unless the structural alteration or additions are required directly or indirectly by the act, omission or default of the Lessee or which arise directly or indirectly from the use to which the Premises may or are intended to be used by the Lessee. If the Lessee does not comply with this covenant, the Lessor and any workmen may (without prejudice to the right of re-entry contained in this Lease) enter the Premises and undertake any work required and the expenses together with interest calculated from the date or dates of expenditure must be repaid by the Lessee to the Lessor on demand.

Assignment and Subletting

- (t) Not to assign, transfer, sub-let, mortgage, charge, licence or otherwise part with possession of the Premises without the prior written consent of the Lessor and the provisions of Section 144(1) of the Property Law Act 1958 are expressly excluded provided that:-

- (i) Consent must not be unreasonably withheld to an assignment or sub-lease where:-

- (A) Written request has been made to the Lessor for consent;
- (B) The Lessee has paid all rental and has fully performed the Lessee's covenants and conditions contained in this Lease;
- (C) The name, address and occupation of the proposed assignee or sub-lessee has been given to the Lessor together with at least two acceptable references as to the financial circumstances and at least two acceptable references as to the business experience of the proposed assignee or sub-lessee. Where the proposed assignee or sub-lessee is a body corporate, two acceptable references as to the financial circumstances and business experience of the directors must also be provided;
- (D) An assignment or sub-lease executed by the proposed assignee or sub-lessee (to which the Lessor is a party) is submitted to the Lessor in a form approved by the Lessor or its Solicitors including a provision that the Lessee and any guarantor must not be released from its obligations under this Lease. Where the proposed assignee or sub-lessee is a body corporate, the document must, if required by the Lessor, include an indemnity and guarantee by the director of the obligations of the Lessee;
- (E) All reasonable costs and expenses incurred by the Lessor in satisfying itself as to the respectability, responsibility, solvency, financial circumstances and business experience of the proposed assignee or sub-lessee relating to the granting of consent and the consideration, approval and execution of any document have been paid by the Lessee;

except if the Act applies when consent may:-

- (a) only be withheld to an assignment if:-
 - (i) the proposed use is inconsistent with the use permitted under this Lease;
 - (ii) the Lessor considers that the assignee does not have sufficient financial resources or business experience to meet the obligations under this Lease;
 - (iii) the assignor has not complied with the assignment provisions of this Lease;

- (iv) the assignor has not supplied the assignee with the business records for the previous 3 years (or any shorter period that the assignor has carried on business from the Premises);
- (b) be withheld (at the absolute discretion of the Lessor) to a sub-lease, licence, concession, parting with occupancy, mortgage, charge, or other encumbrance upon the estate or interest of the Lessee, that in any way relates to this Lease;

(ii) The Lessor reserves the right to require supporting personal guarantees for performance of the Lessee's covenants contained in this Lease from any suitable person when the proposed assignee or sub-lessee is an individual or to require the Lessee to lodge a bond or bank guarantee as security for due performance by the proposed assignee or sub-lessee of the Lessee's covenants;

(iii) Where:-

(A) The Lessee is a body corporate;

(B) A change occurs during the Term in:-

- (i) The membership of the body corporate or any holding company of the body corporate; or
- (ii) The beneficial ownership of any shares in the capital of the body corporate or any holding company of the body corporate; or
- (iii) The beneficial ownership of the business or assets of the body corporate;

(C) As a result of that change, the body corporate or the business of the body corporate is after the change effectively controlled by a person or persons who at the Commencement Date did not effectively control the body corporate or the business of the body corporate -

the Lessee shall, unless the prior written consent of the Lessor has been obtained to the change, be deemed to have assigned this Lease;

(iv) The Lessor must not unreasonably withhold its consent to a change referred to in sub-clause (iii)(B) if the Lessee complies as far as possible with the requirements of Clause 1(t);

(v) The Lessor may require any new director of a body corporate to execute an indemnity and guarantee of the performance and observance of the Lessee's covenants contained in this Lease and to lodge a bond or bank guarantee as security for the amount described in Clause 1(v) below.

Reletting or Sale

(u) To permit the Lessor and the Agent or their respective employees or agents or others with the written authority of the Lessor to enter the Premises at all reasonable times and on reasonable notice:-

(i) To affix a notice to any part of the Premises that does not unreasonably interfere with the business of the Lessee, offering the Premises or the Building for sale or lease; and

(ii) To enable prospective purchasers or tenants to view the Premises.

Security Deposit

(v) On or prior to the Commencement Date, the Lessee must pay the amount specified in Item 14 of the Schedule or, at the absolute discretion of the Lessor, lodge a bank guarantee ('the Security Deposit') as security for the performance by the Lessee of its obligations under this Lease which must be held by the Agent or as otherwise prescribed by law, during the period that the Lessee occupies the Premises. If in the reasonable opinion of the Lessor or the Agent, the Premises are in a clean and tenantable condition on the date the Lessee vacates the Premises and the Lessee has fully complied with the Lessee's covenants contained in this Lease, the Security Deposit must be repaid to the Lessee within 14 working days of the date on which the Lessee vacates the Premises, otherwise the Agent may, at their discretion, pay to the Lessor such amount as may be necessary to rectify any breach of any covenant

or to restore the Premises and account to the Lessee for the balance. If the Security Deposit is insufficient to rectify the breach or to meet the cost of restoration, the Lessee must pay any additional amount to the Lessor on demand.

Interest

- (w) Without prejudice to any other rights of the Lessor, the Lessee must pay to the Lessor on demand interest at a rate being the aggregate of two per cent and the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 on any rental or other moneys which are due and payable under the covenants of this Lease provided that, except in the case of rental or other moneys which it has been agreed will be paid on a particular date or moneys which have been expended by the Lessor to remedy any default by the Lessee under the covenants of this Lease, interest must not be demanded until 14 days after the date on which the Lessor has made demand.

**Lessor's
Costs etc**

- (x) To pay:
- (i) The Lessor's costs, charges and expenses including the Lessor's legal costs of and incidental to the preparation, completion, execution and stamping of this Lease and any variation or surrender of this Lease;
 - (ii) Any stamp duty on this Lease;
 - (iii) All reasonable costs and expenses which the Lessor may expend or incur as a consequence of any default by the Lessee in the performance of the covenants contained in this Lease or under or in the exercise or enforcement or attempted exercise or enforcement of any power authority or remedy contained or implied in this Lease; and
 - (iv) Any reasonable costs incurred by the Lessor in connection with the granting of any consent or approval, whether or not that consent or approval is actually granted.

If the Act applies, the Lessor may only recover the payments permitted by the Act.

2. THE LESSOR COVENANTS AND AGREES with the Lessee as follows:

**Quiet
Enjoyment**

- (a) The Lessee paying the rental reserved and performing and observing the Lessee's covenants and agreements contained in this Lease may peaceably hold and enjoy the Premises during the Term without any disturbance or interruption from the Lessor or any person lawfully claiming by, through or under the Lessor.

**Access to the
Premises**

- (b) The Lessee shall be entitled to use all lifts, passages, driveways and courtyards in common with other lessees to enable access to the Premises.

Insurance

- (c) The Lessor, if required by the Lessee, must produce particulars of any insurance effected by the Lessor relating to the Premises.
- (d) If the Act applies, the Lessor must satisfy the requirements of Section 52 of the Act.

3. IT IS MUTUALLY AGREED AND DECLARED between the parties as follows:-

Destruction

- (a) Subject to the Act -
- (i) If:
 - (A) The Premises or any part are totally or partially destroyed or damaged during the Term by fire, storm, tempest, earthquake, explosion or inevitable accident so as to be unfit for use and occupation by the Lessee; and
 - (B) The event causing the destruction or damage was not caused by the default of the Lessee; and

(C) Any policy of insurance effected by the Lessor has not been vitiated or payment or renewal refused as a result of the act, default or neglect of the Lessee -

then the rental and outgoings or a fair and reasonable proportion having regard to the nature and extent of the destruction or damage or to any interference with their use by the Lessee must, so long as the Premises are unfit for use and occupation, be suspended and cease to be payable.

(ii) If either party disputes the proportion or period of abatement the dispute must (subject to the provisions of Clause 3(m)) be referred to arbitration under the Commercial Arbitration Act 1984 and abatement shall be in full satisfaction of all claims (if any) for damages by the Lessee against the Lessor.

(iii) Notwithstanding the provisions of this sub-clause, if the Premises are totally or substantially destroyed and not reinstated within three months, the Lessor or the Lessee may elect by notice in writing to the other to determine this Lease and from the date of service of the notice all claims under this Lease, excepting those claims which have arisen prior to that date, shall be at an end.

Cessation of Building Services

(b) Except in the case of voluntary withdrawal by the Lessor or as provided by the Act (if applicable), no damages, compensation or abatement or rental shall be claimed by the Lessee or allowed by the Lessor for cessation of, damage to, or failure or breakdown of any of the Services provided in the Building. Reference of 'Services' shall include, but not be limited to, electricity, gas, water, sprinklers, alarms, pumps, airconditioning, heating, cooling or ventilation equipment, hot water service, cleaning and lifts.

Overholding

- (c) (i) If the Lessee remains in occupation of the Premises after the expiration of the Term, without objection by the Lessor, then as from the expiration of the Term, the Lessee shall be deemed to be a tenant from month to month on the same covenants and conditions, so far as they are applicable to a monthly tenancy, as are contained in this Lease.
- (ii) Unless otherwise agreed, the monthly rental shall be the same as that payable immediately prior to the expiration of the Term but the Lessor shall have the right to increase the monthly rent upon one month's notice in writing.
- (iii) The tenancy may be determined by either party on the expiration of one month's prior notice in writing which may be given to expire at any time.

Determination

- (d) (i) If:
- (A) The Lessee fails to pay the rental or any other moneys payable by the Lessee to the Lessor under this Lease for a period of 14 days after any of the days on which they ought to have been paid, although no formal or legal demand has been made; or
- (B) The Lessee breaches or fails to observe or perform any of the Lessee's covenants contained or implied in this Lease; or
- (C) The Lessee is in Liquidation, except with the written consent of the Lessor for the purposes of reconstruction or amalgamation, -
- then the Lessor, despite any waiver of any previous breach or default by the Lessee or the failure of the Lessor to have taken advantage of any previous breach or default, may in addition to any other power, re-enter the Premises or any part and occupy or re-let the Premises.
- (ii) In exercising the right of re-entry, the Lessor and persons authorised by the Lessor may break open any inner or outer door, fastening or other obstruction and forcibly eject the Lessee and any other persons found in the Premises together with any furniture or other property without being liable for trespass assault or any other proceedings whatsoever and shall be entitled to plead the leave and licence which is granted by this Lease in defence of any such action or proceedings which may be brought by the Lessee.

(iii) Upon re-entry, this Lease shall absolutely determine but without prejudice to the right of action of the Lessor in respect of any previous breach of any of the Lessee's covenants provided that the right of re-entry for any breach of any covenant term or condition to which Section 146 of the Property Law Act 1958 extends shall not be exercisable until the expiration of 14 days after the Lessor has served on the Lessee the notice required by Section 146(1) specifying the breach and if the breach is capable of remedy requiring the Lessee to remedy the breach or to make reasonable monetary compensation to the satisfaction of the Lessor for the breach. If the Lessor re-enters the Premises pursuant to this Clause, it may at its option remove any property of the Lessee from the Premises and store it at the risk and at the expense of the Lessee.

Essential Terms

(e) The covenants contained in Clauses 1(a), 1(b), 1(c), 1(d), 1(f), 1(h), 1(j), 1(o), 1(s) and 1(t) are essential terms of this Lease and where there is a breach of any of these covenants by the Lessee, the Lessor shall, in addition to the right of re-entry, be entitled to sue the Lessee for loss of the benefits which performance of the covenants by the Lessee would have conferred on the Lessor between the date of the default giving rise to the re-entry and the date the Premises are re-let. The Lessor may also recover any deficiency between the rental payable by the new tenant and the rental payable by the Lessee had the Term of this Lease not been determined provided that the Lessor shall take all reasonable steps to mitigate the loss.

Further Term(s)

- (f) (i) The Lessor must on the written request of the Lessee delivered to the Lessor not more than six months and not less than three months prior to the expiration of the Term and so long as:
- (A) There is no unremedied breach of this Lease by the Lessee of which the Lessor has given written notice; and
 - (B) The Lessee has not persistently committed breaches of this Lease of which the Lessor has given notice during the Term, -
renew this Lease for the Further Term(s) set out in Item 15 of the Schedule. The last date for exercising the option for renewal is stated in Item 16 of the Schedule.
- (ii) If the rental for the Further Term is not agreed between the parties within one month of the request, the rental shall be determined as otherwise set out in 3(g)(ii) below.
- (iii) The Lease for the Further Term shall otherwise contain the same terms and conditions as are set out in this Lease but excluding this agreement for renewal.
- (iv) Where on the execution of this Lease or on any assignment of this Lease, guarantees, indemnities or covenants were or are provided securing the obligations of the Lessee, similar guarantees, indemnities or covenants executed by the same parties must be provided securing the obligations of the Lessee under any renewed Lease entered into under this Clause. If such guarantees, indemnities or covenants are not provided, the Lessee shall not be entitled to require the Lessor to renew this Lease.
- (v) If the Act applies to this Lease then:
- (A) If there is no provision for a Further Term, the Lessor must at least six months and not more than 12 months prior to the expiration of the Term give written notice to the Lessee either offering a renewal of this Lease on terms specified in the notice or informing the Lessee that no renewal is to be offered. Any offer of renewal cannot be revoked for one month and unless accepted by the Lessee during that period, the offer shall be deemed to have been withdrawn;
 - (B) If there is provision for a Further Term or the Lessor proposes to renew this Lease, the Lessor must give to the Lessee at least 21 days before the end of the Term, a disclosure statement complying with the requirements of the Act.

Review of Rent to Market

- (g) (i) The rental specified in Item 7 of the Schedule and the rental agreed upon or determined for any Further Term must be reviewed on each review date specified in Item 17 of the Schedule (the Review Date) in the manner referred to in this Clause 3(g).
- (ii) If the parties fail to agree on the new current market rent of the Premises 14 days prior to the Review Date, then it must be determined by a 'Specialist Retail Valuer' (as defined in the Act and who acts as an expert and not an arbitrator) who must also be a practising estate agent appointed at the request of either party by the President or other senior office bearer for the time being of The Real Estate Institute of Victoria Ltd.(the Institute). The determination of the Specialist Retail Valuer shall be binding on the parties. The costs of the Specialist Retail Valuer are payable equally by the parties. The rental as determined must not be less than the rental payable immediately prior to the Review Date (except where the Act applies).
- (iii) If by the Review Date the reviewed rental has not been determined then the Lessee must continue to pay the previous rental and any necessary adjustment between the parties must be made no later than seven days after the determination has been delivered.

CPI Adjustment

- (h) (i) On each date specified in Item 18 of the Schedule (the Adjustment Date) the rental payable under this Lease (subject to sub-clause(iii)) must be adjusted by reference to the Consumer Price Index in accordance with the following formula:
- R equals A multiplied by B divided C
- Where:
- R is the adjusted rental payable from the Adjustment Date.
- A is the rental payable immediately before the Adjustment Date.
- B is the quarterly Consumer Price Index (All Groups) figure for Melbourne (The CPI figure) last published by the Australian Government Statistician prior to the relevant Adjustment Date.
- C is the CPI figure last published prior to the previous Adjustment Date or Review Date or (if there is no previous Adjustment Date or Review Date) prior to the Commencement Date.
- (ii) If the CPI figure is not current on both Adjustment Date or a substantial change takes place in the method or basis of calculating the CPI figure, then the Lessor and the Lessee must endeavour to reach agreement within 14 days of the Adjustment Date as to the alternative index, failing which the President or other senior office bearer for the time being of the Institute (acting as an expert and not as an arbitrator) shall determine an appropriate index which reflects changes in the cost of living in Melbourne.
- (iii) It is agreed by the parties that the rental must not be adjusted under this Clause 3(h) (unless the Act applies to this Lease) if the calculation would result in the rental decreasing.

Fixed Rental Increase

- (i) On each Adjustment Date referred to in Item 18 of the Schedule the rental payable under this Lease immediately prior to the Adjustment Date must be increased by the percentage set out in Item 19 of the Schedule.

Indemnity by Lessee

- (j) This Lease is entered into upon the express condition that the Lessor shall not in any way liable for any damage or injury to the Premises or to the Lessee or to the Lessee's property or to the property of any employee, agent, invitee or licensee of the Lessee by reason of any happening not attributable to a negligent act of the Lessor. To the extent that it is not prohibited by law, the Lessee indemnifies and agrees to keep the Lessor indemnified in respect of all claims, actions, suits, demands, judgements or costs arising from such damage or injury.

- Notices** (k) Except where a specific mode of service is prescribed by law, any notice required or permitted by this Lease shall, in addition to any method prescribed by law, be deemed to have been validly given if delivered personally or sent by post to another party at the address shown in the Schedule or if it is left at the last known place of abode or business of that party in the State of Victoria or in the case of the Lessee is affixed to or left for the Lessee at the Premises. Any notice sent by post shall be deemed to have been received by the party to whom it was sent at the time at which the letter would have been delivered to that party in the ordinary course of post.
- Rules** (l) The Lessor reserves the right to make and/or alter rules and regulations which are not inconsistent with the rights of the Lessee expressed in this Lease and which relate to the management of the Building and/or to its use and occupation by the Lessee provided that no rule or regulation or any alteration shall bind the Lessee until communicated to the Lessee in writing.
- Disputes** (m) (i) If the Act applies to this Lease, any dispute must be determined according to Part 10 of the Act.
- (ii) If a dispute is referred to the Victorian Civil and Administrative Tribunal under the Act, or otherwise to conciliation or arbitration, then any party to the proceedings may be represented by their own chosen legal practitioner or legal practitioners.
- (iii) Subject to the Act (if applicable), any dispute between the Lessee and any other lessee or occupier of the Building concerning the use of the Premises must be referred to the Lessor or the Agent for settlement and the decision of the Lessor or the Agent shall be final and binding.
- Goods and Services Tax** (n) in this Lease:
- (i) "GST" means GST within the meaning of the GST Act.
- "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- Expressions used in this clause 3 (n) and in the GST Act have the same meanings as when used in the GST Act.
- (ii) Except where this Lease states otherwise, each amount payable by a party under this Lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.
- (iii) An amount payable by the Lessee in respect of a creditable acquisition by the Lessor from a third party must not exceed the sum of the value of the Lessor's acquisition and the additional amount payable by the Lessee under sub-clause 3(n) (ii) on account of the Lessor's GST liability.
- (iv) A party is not obliged, under sub-clause 3(n)(ii), to pay the GST on a taxable supply to it under this Lease, until given a valid tax invoice for the supply.
- (v) An adjustment of the consideration payable under this Lease to take account of the New Tax System changes referred to in the Trade Practices Act 1974 must not constitute price exploitation within the meaning of that Act or breach the guidelines in force from time to time published by the Australian Competition and Consumer Commission under Part VB of that Act.
- Joint and Several Covenants** (o) Where any party comprises two or more persons the covenants and obligations on the part of that party shall bind those persons jointly and each of them severally.
- Waiver** (p) No waiver by the Lessor of any breach by the Lessee of any of the terms, covenants and conditions of this Lease shall operate as the waiver of another breach of the same or of any other term, condition or covenant contained in this Lease.

Act, Statutes

- (q) References to a specific statute shall include a reference to any order, ordinance, regulation, rule or by-law made under the statute and all amendments, modifications, re-enactments, consolidation or replacements.

Headings

- (r) Marginal or head notes shall not affect the construction of this Lease.

Interpretation

- (s) In this Lease:-
- (i) The expression 'the Lessee' includes the Lessee and the executors, administrators and permitted assigns of the Lessee or being a body corporate, its successors and permitted assigns and shall where the context permits include an employee, agent, contractor, licensee or invitee of the Lessee;
 - (ii) The expression 'the Lessor' includes the Lessor, the assigns, executors and administrators of the Lessor or being a body corporate, its successors and assigns and the reversioner immediately expectant on the Term created by this Lease;
 - (iii) the singular includes the plural and the masculine gender includes the feminine and neuter genders;
 - (iv) A reference to 'Liquidation' includes official management, receivership, appointment of an administrator, deregistration, winding up, dissolution, assignment for the benefit of or compromise, arrangement, composition or moratorium with creditors generally or any class of creditors, deed of company arrangement, scheme of arrangement, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
 - (v) Any provision must be interpreted so that it does not infringe against the Acts of any Parliament or any regulations made under those Acts. Any provision that does infringe must be read down to the extent necessary to give it, if possible, an operation of a partial character, but if it cannot be read down, it shall be deemed to be severable. If any provision is held invalid by a Court, that provision must be disregarded and the remainder of this Lease shall continue in force.
 - (vi) References to the Act mean the Retail Leases Act 2003.
 - (vii) The expression "bank guarantee" means a guarantee by an "Authorised Deposit-Taking Institution" under the Commonwealth Banking Act 1959.
 - (viii) The language must be tempered so that it complies with all relevant laws and other lawful directions, otherwise the offending language must be read down so as to be as effective as possible. If this objective provides impossible, then the offending language must be severed from this Lease.

Schedule

Item

1. Lessor:

C/- 265 MAROONDAH HIGHWAY, RINGWOOD 3134
2. Lessee:

OF
3. Premises:
4. Fixtures and Chattels (if any):
5. Term:
6. Commencement Date:
7. Rental:
\$
per CALENDAR MONTH (PLUS GST IF APPLICABLE)

Clause

- 1(a) 8. **Manner and payment of rental: calendar monthly ALWAYS ONE MONTH IN ADVANCE AS AT THE DAY OF EACH MONTH**
- 1(a) 9. **Lessor's Agent: TREEBY COMMERCIAL REAL ESTATE
265 MAROONDAH HIGHWAY, RINGWOOD 3134**
- 1(b) 10. **Outgoings excluded:**
- 1(b) 11. **Portion of rates, taxes, etc to be borne by the Lessee:**
 - 11a. **The proportion of building that the lettable area of the Premises bears to the lettable area of the Building:**
- 1(c) 12. **Building operating expenses to be borne by the Lessee as referred to in clause (c):**
- 1(o) 13. **Use of premises:**
- 1(v) 14. **Security Deposit:**
- 3(f) 15. **Further Term:**
- 3(f) 16. **Last date for exercise of Option:**
- 3(g) 17. **Market Review Date(s):**
- 3(h)&(i) 18. **Adjustment Date(s):**
- 3(i) 19. **Percentage increase in Rental:**
20. **The Retail Leases Act does / does not apply to this lease.**

EXECUTED BY THE PARTIES AS A Deed and dated

EXECUTED BY)
)
In accordance with Section 127)
)
Of the Corporations Act 2001)

.....
Director

.....
Director/Secretary

.....
Print Full Name

.....
Print Full Name

EXECUTED BY)
)
)
In accordance with Section 127)
)
Of the Corporations Act 2001)

.....
Director

.....
Director/Secretary

.....
Print Full Name

.....
Print Full Name

Guarantee and Indemnity

IN CONSIDERATION of the Lessor named in the attached Lease (the Lessor) having agreed at the request of

(together called the Guarantor) to enter into the attached Lease (the Lease) with the Lessee named in the Lease (the Lessee), the Guarantor **GUARANTEES** the performance by the Lessee of all terms, covenants and conditions contained in the Lease and the punctual payment by the Lessee to the Lessor of the rental and all other moneys payable by the Lessee under the Lease and all costs and damages which may be payable by the Lessee on any default, repudiation or otherwise. Furthermore, as a separate and independent obligation, the Guarantor **INDEMNIFIES** the Lessor and agrees to keep the Lessor always indemnified against all loss arising out of or relating to the Lease including without limitation all losses, costs, charges, damages and expenses which the Lessor may incur for or by reason of any default by the Lessee or by reason of the termination of the Lease for any reason and further agrees that any moneys which are not recoverable for any reason (including without limitation disability, immunity, infancy, incapacity or any Statute of Limitations), whether or not the Lessor knew or ought to have known, shall be recoverable from the Guarantor as sole or principal debtor and shall be paid to the Lessor on demand.

1.1 The Guarantor agrees that the liability of the Guarantor shall not be abrogated, prejudiced or affected by:-

- (a) any postponement, forbearance or other concession granted to the Lessee or to any other person nor any compounding or full or partial release or discharge of the Lessee or any other person from liability under this Guarantee and Indemnity or from any other right of the Lessor against the Lessee or any compromise, abandonment, waiver, variation, relinquishment or renewal of the Lease, any securities or assets or by any act, neglect or omission by the Lessor in exercise of the powers and discretions vested in the Lessor by or under the Lease;
- (b) a judgment against the Lessee in any Court;
- (c) the Liquidation of the Lessee or any other person;
- (d) any other person or corporation whether or not named in this Guarantee and Indemnity giving or failing to give an indemnity or guarantee of the Lessee's obligations to the Lessor;
- (e) the liability of the Lessee ceasing for any cause or any indemnity, guarantee or security to secure the obligation being released or discharged or being void, defective or informal;
- (f) any assignment by the Lessee of its interest in the Lease to another person or corporation;
- (g) any alteration, variation, addition or modification to or of the Lease or this Guarantee and Indemnity and whether or not the Lessee and/or the Guarantor have specifically agreed or consented;
- (h) the failure or omission by the Lessor to give notice to the Guarantor of any default by the Lessee under the Lease; or
- (i) anything else which under the law relating to sureties would, but for this provision, have the effect of releasing the Guarantor.

1.2 This Guarantee and Indemnity shall be a continuing guarantee and indemnity and shall remain in full force until the full amount for which the Guarantor is liable under the Lease has been paid to the Lessor and shall be enforceable by the Lessor without first taking any steps or proceedings against the Lessee. Despite the termination or expiration of the Lease, the Lessor may determine if and when it shall enforce or refrain from enforcing this Guarantee and Indemnity.

1.3 The liability of the Guarantor under this Guarantee and Indemnity shall extend to all amounts which:-

- (a) may be payable by the Lessee to the Lessor for any period during which the Lessee overholds under the Lease or otherwise remains in occupation of the Premises notwithstanding that the Term of the Lease has expired or may otherwise have terminated;

(b) may be payable by the Lessee to the Lessor under any equitable lease which may arise on the exercise by the Lessee of any option for a Further Term contained in the Lease; or

(c) the Lessor has been paid by the Lessee but which the Lessor is obliged to repay on the ground of preference or otherwise.

1.4 The Guarantor covenants that there is a benefit accruing to the Guarantor as a result of the Lessor entering into the Lease with the Lessee.

1.5 Any notice required or permitted under this Guarantee and indemnity shall, in addition to any method prescribed by law, be deemed to have been validly given in accordance with the procedures referred to in Clause 3(i) of the Lease.

1.6 It is the intention of the parties that where the context so admits:-

(a) the singular includes the plural and the masculine gender includes the feminine and neuter genders;

(b) the expressions 'Guarantor', 'Lessor' and 'Lessee' when used in reference to an individual or individuals, shall be deemed to include and also to refer to his, her or their respective heirs, executors, administrators and transferees and when used in reference to a body corporate shall be deemed to include and also to refer to the successors and permitted assigns of the body corporate. The expression 'Lessor' shall also include the registered proprietor or proprietors from time to time of the Premises referred to in the Lease;

(c) a reference to 'Liquidation' includes official management, receivership, appointment of an administrator, deregistration, winding up, dissolution, assignment for the benefit of or compromise, arrangement, composition or moratorium with creditors generally or any class of creditors, deed of company arrangement, scheme of arrangement, insolvency, bankruptcy or a similar procedure or, where applicable, changes in the constitution of any partnership or person or death;

(d) where there is more than one Guarantor, the liability of the Guarantors shall be joint and several.

EXECUTED by the Guarantor as a Deed and dated

20

SIGNED SEALED AND DELIVERED by)
)
in the presence of:)

Witness:

Signature

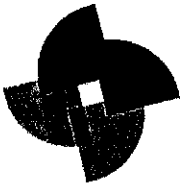
Print Full Name

SIGNED SEALED AND DELIVERED by)
)
in the presence of:)

Witness:

Signature

Print Full Name



Information brochure

The *Retail Leases Act 2003*

This brochure constitutes the information brochure about retail leases published by the Victorian Small Business Commissioner for the purposes of section 15 of the *Retail Leases Act 2003*.

It must be provided to a tenant or prospective tenant as soon as negotiations on a lease are entered into, together with a copy of the proposed lease in writing.

The *Retail Leases Act 2003*

The *Retail Leases Act 2003* commenced on 1 May 2003 and is the main governing legislation for retail leasing in Victoria.

When leases under the *Retail Tenancies Act 1986* or the *Retail Tenancies Reform Act 1998* are renewed, they become subject to the *Retail Leases Act 2003*.

Coverage of the Act

The *Retail Leases Act 2003* does not apply to all premises or businesses. It applies to 'retail premises' as defined in the Act but excludes some premises and businesses.

Meaning of 'retail premises'

The *Retail Leases Act 2003* applies to a retail premises lease used wholly or predominantly for the sale or hire of goods by retail or the retail provision of services.

Exclusion from coverage of the Act

The *Retail Leases Act 2003* does not apply to:

- tenants in premises that are not used, or to be used, wholly or predominantly for the sale or hire of goods by retail or the retail provision of services
- retail tenants whose occupancy cost (the combined cost of rent and outgoings) exceeds \$1M per annum
- tenants that are listed corporations or subsidiaries of listed corporations
- leases for a term of less than one year (note the Act may apply to a tenant being in continuous possession for more than one year)
- premises or businesses as determined by the Minister.

Importance of your lease

A lease is an important document which impacts a business in a number of ways. It's also a legally binding document which holds the parties to its terms and conditions. Prospective tenants should ensure they understand all provisions of the lease they are about to enter, and should obtain advice from a solicitor experienced in leasing law before signing any documentation.

Entering into a lease

A lease is entered into or assigned when the tenant enters into possession of the premises with the consent of the landlord or starts paying rent or the lease or assignment is signed by all parties, whichever occurs first.

Disclosure – the importance of knowing the facts up-front

An important principle of the *Retail Leases Act 2003* is that the parties know what they are getting into before entering into the lease.

Before a lease is entered into or renewed, landlords must provide a disclosure statement to prospective tenants.

A disclosure statement details important aspects of the lease, such as rent, outgoings and other obligations. Prospective tenants should ensure they carefully examine the details of the disclosure statement; its contents can have a significant impact on the lease and the viability of the business.

Where there is a new lease for retail premises, at least 7 days before the lease is entered into, the landlord must give the tenant:

- a disclosure statement, and
- the completed proposed lease.

Renewed leases

Where a tenant exercises an option to renew a lease, the landlord must give the tenant a disclosure statement 21 days before the end of the current lease.

Where a lease does not contain further option(s) but the parties agree to renew the lease, the landlord must give the tenant a disclosure statement within 14 days of entering into the agreement for renewal.

Why is it important for landlords to provide a disclosure statement?

Where the landlord fails to provide a disclosure statement the tenant may:

- withhold rent, and is not liable to pay rent until the disclosure statement is given, and
- terminate the lease.

A tenant may only exercise the right to withhold rent after giving the landlord written notice that they have not received the disclosure statement. This must be done no earlier than 7 days and no later than 90 days after the lease commenced. Tenants who have given such a notice may exercise the right to terminate the lease if they give the landlord written notice within 7 days after receiving the disclosure statement.

The tenant may also terminate the lease where a completed copy of the lease was not given to the tenant or the disclosure statement contains information that is misleading, false or materially incomplete.

Landlord's obligation to provide a copy of lease and information brochure

New leases:

A landlord or landlord's agent is required to provide the prospective tenant with a copy of the proposed lease and a copy of this information brochure as soon as lease negotiations are commenced. A failure to do so is an offence.

Copy of signed lease:

Within 28 days after the retail premises lease is signed by the tenant, the landlord must give the tenant a copy (which may be a photocopy) of the lease that has been signed by both the landlord and the tenant.

Leasing costs

Leases are important documents because they detail costs which will be incurred by tenants. Rent is only a component of the total costs, however landlords will pass on most other costs to tenants. These will be detailed in the disclosure statement and shown as outgoings.

Under the *Retail Leases Act 2003*, landlords cannot pass on their land tax liability to tenants or their legal costs associated with preparation of the lease. However, if the landlord incurs costs in connection with the assignment of the lease or sub-lease, then the tenant may be liable to pay for these expenses.

Before signing a lease

A lease deals with many matters. A prospective tenant should ensure that its main features are acceptable. These include:

- the term of the lease and options to renew
- rent and the basis of rental reviews
- the dates of exercise of any option(s) for further lease terms and associated rent increases
- outgoings or shared operating expenses
- obligations to repair/maintain
- permitted use
- assignment.

Unconscionable conduct

Part 9 of the *Retail Leases Act 2003* deals with unconscionable conduct. Landlords and tenants under a retail premises lease or proposed retail premises lease must not, in connection with the lease, engage in conduct that is, in all the circumstances, unconscionable.

Certain conduct is not unconscionable

Conduct is not to be deemed unconscionable merely because a person failed to enter or renew a lease, or if the person instituted proceedings or referred a matter to some form of alternative dispute resolution, or if the person did not agree to the conduct of an independent valuation of current market rent.

Benefit of unconscionable conduct provisions

Unconscionable conduct provisions of the *Retail Leases Act 2003* protect tenants against grossly unfair conduct by landlords such as unwillingness to negotiate and use of unfair tactics.

One of the factors to be considered in whether a landlord has acted unconscionably is if a landlord has unreasonably used turnover information in rent negotiation. The Act also includes provisions relating to protection for tenants against relocation, demolition and damaged premises.

Appointment of Specialist Retail Valuers to Determine Rent Disputes

If a tenant exercises an option for a further term under the lease, the landlord and tenant may disagree on the rent for the renewed term. If the landlord and tenant fail to agree on the appointment of their own valuer to determine the rent, either party can request that the Small Business Commissioner appoint a Specialist Retail Valuer to determine the rent under the *Retail Leases Act 2003* (the landlord and tenant pay the costs of the valuation equally).

Checklist

Before entering into a new lease:

- landlord or agent must provide a copy of the lease and information brochure at negotiation stage
- lease must be in writing
- landlord must provide a copy of the disclosure statement to tenant at least 7 days prior to entering into a lease
- if disclosure statement not given, tenant can withhold rent, provided the tenant notifies landlord within 90 days
- if disclosure statement not given (or is misleading/false), the tenant can terminate the lease within 28 days (although the landlord can object)
- if tenant is later given disclosure statement, they can terminate within 7 days of receipt
- minimum 5-year term for lease (unless the tenant obtains a certificate from the Victorian Small Business Commissioner waiving their right to a 5-year initial term and gives the certificate to the landlord).

After entering into the lease:

- landlord must give tenant a copy of lease 28 days (or other period of time to which the parties have agreed) after it is entered into
- if the landlord and tenant cannot agree on maximum fit-out, it is to be determined by an independent Quantity Surveyor nominated by the Small Business Commissioner
- landlord can only charge outgoings where the tenant has been given an estimate of those outgoings before the lease is entered into (in the landlord's disclosure statement) and at least one month before each of the landlord's accounting periods during the term of the lease.
- rent can be based fully or partly on turnover, but the lease must specify how rent is to be determined. Rent reviews must be based on one of the methods detailed in the Act
- landlord must provide a disclosure statement where tenant exercises an option or lease is renewed
- landlord can only refuse an assignment of lease in limited circumstances
- tenant must follow procedure in the *Retail Leases Act 2003* for obtaining consent for assignment from landlord.

Ministerial Determinations

Since the introduction of the *Retail Leases Act 2003*, a number of premises and tenants have been excluded from the coverage of the Act through ministerial determinations.

The determinations are available at the Office of the Victorian Small Business Commissioner website www.sbc.vic.gov.au

Office of the Victorian Small Business Commissioner

The Victorian Small Business Commissioner is dedicated to promoting a competitive and fair environment for retail tenants and landlords.

The Victorian Small Business Commissioner:

- assists in resolving disputes between landlords and tenants through mediation or other forms of alternative dispute resolution
- provides information and guidelines to tenants and landlords on retail leasing
- issues certificates for the purpose of waiving the 5-year initial term provisions for leases
- delivers education programs.

Dispute resolution

An important principle of dispute resolution under the *Retail Leases Act 2003* is that a retail tenancy dispute must first be referred to the Commissioner before it can proceed to the Victorian Civil and Administrative Tribunal (VCAT). An exception to this requirement is that disputes about rent alone or applications for injunctive relief do not need to be first referred to the Commissioner.

A Referral of Retail Tenancy Dispute form is on the website.

Further Information

Office of the Victorian Small Business Commissioner

Telephone 13VSBC (138 722)
Or visit website: www.sbc.vic.gov.au

This brochure constitutes the important information brochure about retail leases published by the Victorian Small Business Commissioner for the purposes of section 15 of the *Retail Leases Act 2003*.

Important Disclaimer

This publication provides general advice only and is not a legal advice about the operation of the *Retail Leases Act 2003*.

Leasing law is complex, and it is vital that anyone proposing to enter into a lease or vary a lease or who is experiencing difficulties with other parties in relation to a lease, **obtain professional advice from a solicitor experienced in leasing law**. The Small Business Commissioner expressly disclaims all and any liability to any person in respect of anything and of consequence of anything done or omitted to be done by any person in reliance, whether whole or partial, upon the whole or any part of the contents of this brochure.

Office of the Victorian Small Business Commissioner: November 2012

Ref: 11/18198