



Australian Government

Department of Industry, Innovation, Science, Research and Tertiary Education



LOOK BEFORE YOU LEASE
Avoiding the pitfalls in retail leasing

Disclaimer

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Stop

Before you sign, do you understand that a retail lease could be the biggest financial commitment you will make in your life?

A lease is a legally binding contract and enforceable by law. You and your landlord have clearly defined rights and responsibilities under lease agreements. Never sign a lease unless you completely understand and agree with all the clauses. Make sure you get good financial and legal advice before you sign anything.

The laws about leases vary between States and Territories. This guide covers general issues but you will still need to contact your State/Territory business association or government department to get local information.

Every State and Territory has local information available from their retail leasing information units. The resource pages in this guide tell you how to find your State or Territory's information unit.

Legal background

Australian States and Territories are responsible for regulating retail tenancies. Each State or Territory has retail tenancy legislation or regulation. While there is no federal retail tenancy law, the Commonwealth adds additional protection against unfair trading through general business laws such as the *Corporations Act 2001* and the *Competition and Consumer Act 2010*.

Contents

Disclaimer	i
Stop.....	ii
Legal background	ii
Contents	1
‘How this guide works’	2
Introduction	2
Does this guide apply to me?	3
What is a lease?	3
Is the lease a retail lease?.....	5
Before signing my retail lease	6
Signing my retail lease.....	17
Being a tenant under the retail lease.....	18
When my retail lease ends	19
If I don’t want my retail lease to end.....	20
Dealing with problems	21
Typical steps to resolving a dispute.....	23
Answers to frequently asked questions	24
Dictionary of some common terms	31

'How this guide works'

Note

Don't sign anything! Don't accept keys or pay bond money before you have professional advice.

Introduction

This guide is designed for people thinking about signing a new lease for a business location. It can help you answer general questions about retail leasing all over Australia, but remember there are some specific differences among the States and Territories. There will also be specific issues relevant to the nature of your particular business that this guide will not be able to cover.

The purpose of this guide is to help you avoid mistakes that others have made. If you know the right questions to ask before signing a lease, and where to look for more information, you might avoid expensive misunderstandings that could cost you and your business. It is a guide to help you ask the right questions. It cannot replace professional advice but it can help you focus on what advice you will need.

The guide gives you warnings and checklists to help you decide how and when to ask for expert help. You should get advice from a solicitor, your local retail tenancy office, small or retail business association, or fair trading office before you sign anything.

Does this guide apply to me?

This guide applies to you if you:

- want to sign a lease; and
- that lease is a retail lease.

What is a lease?

A lease is a legally binding contract between you and a landlord. It allows you to occupy a shop or 'premises' (these terms can be used interchangeably). It is important for you to understand what it allows you to do, requires you to do and for how long. The lease usually tells you about:

- the space – by describing it (you should be provided with or obtain a plan showing the space)
- your rights
- your obligations and liabilities
- your landlord's rights
- your landlord's obligations and liabilities
- conditions which apply to your use of the space – things like the rent, other costs that you must pay, how long you can stay and in what condition you must leave the space when you vacate, and
- what you can expect about the retail space.

At what point do I have a lease?

In most cases a lease will start when a lease document is signed by the landlord and tenant. However, retail tenancy legislation recognises that a lease might start before this time – for example if you take possession of the premises before the lease is signed, or a landlord offers in writing to rent space to you on quite clear terms and you accept that offer.

Definitions of a retail lease vary in each State and Territory and you should make sure of the definition in your State/Territory.

It is important to be careful and understand when you are committing yourself to a binding agreement. It is common for the landlord and tenant to agree the key terms of the proposed lease before the formal lease is prepared. Whether or not both parties are bound at this stage will depend on the actual wording used and the actions of both parties. Most commonly, however, this stage will only be to 'approve' the commercial terms of the lease deal and will not be a binding agreement until both the landlord and tenant have agreed to the terms of a formal lease document and signed that document. In some States and Territories, before the lease is binding, either party can change their mind and walk away.

Early access arrangements

Often a landlord will not permit a tenant to occupy premises until a formal lease document is signed and any other requirements have been met (for example, payment of a bond or evidence of insurance).

However, sometimes it might be in a tenant's interest to occupy the premises before all of the formal documentation has been squared away. For example, a tenant might need to start cabling or other fit out works as soon as possible. In some cases an 'early access' arrangement can be organised with the landlord, but with agreement that this is not yet a lease. This kind of arrangement provides a tenant with time to review and negotiate a lease as well as quick access to the premises. It is important that the terms of any 'early access' arrangement are still agreed on by the landlord and tenant, for example, by a simple letter setting out the basis on which access to the premises is granted to the tenant and protections for both parties in the event that a formal lease document is not finalised. These arrangements may require that if the formal lease document is not agreed within a certain period, the tenant must remove its works and

vacate the premises. You should consider the risk that the lease will not proceed and, if this happens, the costs you will incur in removing any works. You should also consider whether, as in some States and Territories, you have created a 5 year lease.

An ongoing relationship

A lease can be a long-term commitment and create a long-term relationship with a landlord. It can encourage investment and initiative and can prove to be a valuable relationship for both parties. A bad lease or a bad relationship, however, can limit your business, cost you a lot of money and sometimes cost you your business. Whatever you say or do before you sign the lease forms part of the 'relationship' with your landlord. Be careful – make no promises you don't mean and always keep notes on your discussions.

What is a registered lease?

A registered lease is a lease that can be registered on the title to the property (much like a mortgage is registered on the title to a residential property). Registration lets the public know of your interest in the land – which is important in relation to people who may deal with the landlord after you have entered into your lease. In most States and Territories a lease for a term of greater than 3 years is required to be registered in order to pass an 'estate' to the tenant (i.e. it gives the tenant a recognised interest in the property itself as opposed to a purely contractual right). Having a registered lease gives a tenant additional protections and rights if something goes wrong.

As a general rule, if you have an option under a lease (i.e. a right to be granted another lease for a new term when your current lease expires), and the original term plus the option term is more than 3 years, the lease should be registered. This ensures the option can be enforced against a new landlord if the current landlord sells the building, otherwise it might not be enforceable.

An 'agreement for lease'

This guide will also help you if you are about to sign an 'agreement for lease' of a retail space. This usually happens when the retail space is still being built or is being refurbished. Strictly speaking, you haven't yet got a lease, but the terms and conditions of the lease are likely to be agreed and you and your landlord have promised to enter into the lease in the future, when the building or premises is ready. An agreement for lease is also a binding agreement.

So if you intend to take a lease or have an agreement for lease, you next need to know whether it is a retail lease under current retail tenancy legislation. If you have taken up an option or extension of a lease you may also be protected by the legislation. Ask your local retail tenancy office, small or retail business association, or fair trading office.

Note

The most common difference between States and Territories is with extending or renewing leases. If you are renewing a lease, you need to refer to your local legislation. Please contact your local government department or business association.

Is the lease a retail lease?

Each State and Territory has passed laws to protect retail lease tenants. Remember, the laws vary between the States and Territories and your lease may not necessarily be covered by the legislation. There are however, some general rules of thumb that indicate whether you might have a retail lease. For example: Does it have a shop front? Is it in a shopping centre? Is the place used predominantly for selling goods or services directly to the general public? You will need to check your local legislation or talk with your local retail tenancy office, small business association or fair trading office to make sure. Some of these contact details are listed in the State/Territory Information Resources at the back of this booklet.

Retail lease legislation is there to protect you and the landlord. In most States and Territories, neither you nor the landlord can enforce anything in a lease that is inconsistent with or contrary to the legislation.

Even if you are not covered by the legislation, you and your landlord are still about to sign a contract. It is very important that you understand the terms and conditions of that contract.

Note

If you are in doubt, ask for help. A solicitor, your local retail tenancy office, small or retail business association, or fair trading office will be able to advise you.

Before signing my retail lease

What information must a landlord give me?

There are many things you need to think about before you sign a lease.

First, the landlord should provide you with a draft of the lease long before the time comes to sign it. This is so you can think about the rules and requirements described in the document and get advice. They might also provide a 'disclosure statement' that has details about the premises, what services the landlord pays for and what you might have to contribute. In some States and Territories, the landlord has to give you a copy of the legislation or guidelines. Check with your State and Territory information resources if you are unsure. In all cases, make sure you get a draft of the lease to take away and think about.

What other matters should I think about?

Each retail lease tenant will have his or her own concerns. To find the answers to your questions you need to:

- talk to the landlord or their agent
- carefully read the material the landlord or the agent gives you
- understand the proposed lease
- talk to your local retail tenancy office, fair trading office, small or retail business association or get expert advice
- take into account your State/Territory retail lease legislation.

On the following pages is a series of tables identifying the sorts of questions and issues you may want to think about.

Working through the tables might help you remember some of the other things that might affect your business success. Also remember that some of the questions may not apply to your situation.

Some of the tables also suggest an approach to reviewing your lease and identifying what the issues or problems might be, and what you may or may not be happy with.

Some of the issues behind the questions are covered by retail leasing legislation so, while the legislation may not answer the question, it can tell you what is not allowed.

Note

What kind of special advice might be needed? Council regulations, car parking, opening hours, taxation advice (GST, depreciation), trade practices/fair trading, regulations (e.g. health, fire, occupational health and safety) – just to name a few!

1. Do your market research - what is available in the market?

Make sure that you take the time to research the market in the area you are looking at. Find out what the average rents in the area are, how these might differ between different buildings or centres and how these might differ depending on the location of the premises in relation to the building. For example, does a particular premises have a particularly good street frontage with a lot of passing pedestrian traffic? Talking to a real estate agent about different areas might be a good start. Also talk to current tenants in the area and current tenants of the landlord.

Remember that doing your market research and knowing about the current market conditions can do a lot to strengthen your bargaining power when entering your first lease as well as when negotiating a lease renewal with your current landlord. Market research is an ongoing activity and something that you should continue to do through the life of your lease – although do not let this take priority over monitoring both your and the landlord's compliance with your current lease.

The table below sets out some example questions to consider. You might think of some more specifically applicable to your business. You can also use the table to record any research you have undertaken.

Topic	What have I found?
<p>Rent</p> <ul style="list-style-type: none"> • What is the average market rent for retail space in the area I am looking at? • What types of rent are being charged – simple annual rent or a combined annual rent plus a component of turnover rent? 	<p><i>Add comments on what you have found about rent.</i></p>
<p>Rent reviews</p> <ul style="list-style-type: none"> • What is currently happening in the market with rent reviews? • Are landlords using a fixed percentage review (for example, a 5% increase each year), CPI review, market review or a combination? • What kind of review would be best for my business? The certainty of knowing next year's rental amount (much like a fixed interest rate) or do I have enough financial flexibility to take a chance with a CPI or a market rent review (like a variable interest rate)? 	<p><i>Add comments on what you have found about rent reviews.</i></p>
<p>Term</p> <ul style="list-style-type: none"> • What lease terms are being offered in the market? • Is there a particular landlord that is more willing to grant leases with an option? 	<p><i>Add comments on what you have found about lease terms.</i></p>
<p>Lease incentives</p> <ul style="list-style-type: none"> • Are landlords currently providing incentives to encourage tenants to enter leases? • Common incentives can take the form of a 'rent free period' (to allow the tenant to fit out the premises and make preparations to commence trading before paying rent) or a contribution to the costs of fitting out the premises. 	<p><i>Add comments on what you have found about lease incentives.</i></p>
<p>Vacancy rates</p> <ul style="list-style-type: none"> • What is the current vacancy rate in the area? • Does this landlord have a particularly high or low vacancy rate? 	<p><i>Add comments on what you have found about vacancy rates.</i></p>

Topic	What have I found?
Add other questions specific to my business?	

2. Consider your business requirements - what does my business require?

These are things to think about before requesting and receiving a copy of the proposed lease.

Once you have a better understanding of what is available in the rental market, it is time to focus again on your business. Is the space you are looking at the right space for your business? As with anything, there will be trade-offs you will have to consider, for example, the premises with the best street frontage and profile might come at a higher rent than a premises that is tucked around the corner. If the premises is tucked around the corner, will you need rights in your lease to advertise outside of your premises, on other parts of the landlord's building or land?

When considering the costs your business can afford, remember that this will be more than the rent payable under the lease. Other costs to consider include outgoings, costs for separate services (such as electricity (if separately metered), telephone and the like), required bond monies, cleaning costs, registration fees and costs in relation to requests for the landlord's consent to any works or signage etc.

The table below sets out some example questions to consider. Again, you might have more questions that are specific to your business.

Topic	My comments
<p>My Business plan</p> <ul style="list-style-type: none"> Look at my business plan. What does it tell me about the right location? Do the premises meet my requirements, e.g. traffic, growth? What can I afford? Remember that the rent is only one part of the costs payable under a lease. 	<p><i>Add comments on what you have found about your business plan.</i></p>
<p>Licences</p> <ul style="list-style-type: none"> Do I need any licenses or permits to run my retail business? 	<p><i>Add comments on what you have found about licenses.</i></p>
<p>The space</p> <ul style="list-style-type: none"> Does the space suit my business? Can I use this space for my intended purpose? Is there any zoning or other requirement that could stop me using the space for my intended use? Do I need to change things like pipes, wiring or surfaces to meet regulations? What types of customers will I target? What types of customers frequent the area? 	<p><i>Add comments on what you have found about the space.</i></p>

Topic	My comments
<p>Physical condition of the space</p> <ul style="list-style-type: none"> • Are there any checks I should make about the premises to be sure they are safe for me and my employees, e.g. if they are 'very old' or dilapidated. What about asbestos? • Does the landlord need to agree in writing to do any works before the tenant takes possession? 	<p><i>Add comments on what you have found about the physical condition of the space.</i></p>
<p>Term</p> <ul style="list-style-type: none"> • How long should my lease be for? In other words, how long do I need to be there to recover my costs and make a profit? • Is there a minimum term that I am entitled to under legislation? (Note that a landlord can require a waiver of a minimum term in some jurisdictions.) • From my market research, is it likely that I will be able to obtain my desired term? 	<p><i>Add comments on what you have found about term of lease.</i></p>
<p>Fit out</p> <ul style="list-style-type: none"> • What fit out will I need and can I afford it? • Is the space right for any pre-designed fit out? • Do I have to get permission and approvals to do any fit out or change to the premises? • From my market research, are there likely to be fit out incentives available? 	<p><i>Add comments on what you have found about the fit out.</i></p>
<p>Add other questions specific to my business?</p>	

3. Receiving and reviewing a lease

You should always have a solicitor review the general terms and conditions of the lease before you sign it, to make sure that it is a balanced and fair agreement. However, you can also review the lease for yourself as well. You need to be sure that you understand and are happy with each of the terms and conditions of the lease. Once you have reviewed the lease for yourself, you will know what you do have a good understanding of and will be able to narrow down the questions that you need to ask someone else to assist with.

The two tables below provide a useful structure to begin reviewing the lease to help you decide if it meets your needs. The tables separate out:

A The core lease details – these are the main commercial terms of the lease and are the best starting point when reviewing a lease.

B The other terms and conditions of the lease – these terms and conditions make up the balance of the lease document and govern the general relationship between the parties.

The tables give you an opportunity to identify the relevant lease clause that deal with the particular topic and to note any concerns/questions that you might have.

Don't forget to read the definitions section for all the defined terms within the lease – usually these are the capitalised terms throughout the document. Defined terms can contain a lot of detail and can significantly affect the meaning of a clause.

A The core lease details

Topic	Lease clause	My concerns/ questions
<p>Premises</p> <ul style="list-style-type: none"> • How are the premises described in the lease? Is there a plan? • Does it state an area in square metres? • Does the premises extend to only the internal wall or does it include the external walls? • Are there particular fittings that are provided as part of the premises? • Is rent per square metre or for the whole space? 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the premises.</i></p>
<p>Term</p> <ul style="list-style-type: none"> • What period is the lease for? • Are you granted an option at the end of the lease? 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the terms of lease.</i></p>

Topic	Lease clause	My concerns/ questions
<p>Purpose / Use</p> <ul style="list-style-type: none"> • What uses are allowed by the lease? • Is this broad enough for my business? Does it factor in any potential changes I might make to the range of goods and services that I might provide over the course of the lease period? • Does it exclude me from offering particular services? • Remember that the permitted use in the lease will be the same use that a future buyer of your business or future assignee of the lease will be limited to using the premises for. Is the use broad enough not to unduly restrict who you can transfer the lease to during the term? • Note that the permitted use can generally be changed during the term but only with the landlord's consent. 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the purpose or use.</i></p>
<p>Rent and rent reviews</p> <ul style="list-style-type: none"> • What is the rent? • How often do I pay rent? • Does that fit my expected cashflow? • If I pay turnover rent, what is 'counted' in my turnover? • What can landlords do with the confidential information about my turnover that I give them? • Do I know what is meant by CPI and market rent reviews? • What is the usual way rent is reviewed? • When is the first review and how often can it be reviewed? • Remember! A 5% annual rent increase means you'll be paying over 20% more rent in 5 years' time. Is this in your business plan? 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the rent and rent reviews.</i></p>
<p>Outgoings</p> <ul style="list-style-type: none"> • How is my outgoings contribution calculated? (See Dictionary) • What kinds of items are included within the definition of outgoings? • What type of disclosure and evidence of costs does the landlord have to provide me with? • Do I have the right to review outgoings? 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the outgoings.</i></p>
<p>Required security</p> <ul style="list-style-type: none"> • Do I have to pay a security bond or security deposit? If yes, how much, to whom, is it safe? How can I lose it? How and when do I get it back at the end of my lease? Does the lease specify that the bond is deposited in an interest bearing account? • What is a bank guarantee, why is it used and will I have to give one? Will someone I sell to or let use part of the space have to give one and why? • If I sell my business will the guarantee end? • If I sell my business will all obligations under the lease end? 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the required security.</i></p>

Topic	Lease clause	My concerns/ questions
<p>Insurance obligations</p> <ul style="list-style-type: none"> • Will I have to take out any insurance? What type – public liability, building, glass, for my fittings, workers compensation? How much will it cost? • Does the landlord insure anything? If yes, will I pay only my fair share of that insurance? • Will I have to get consent from a landlord about things that might affect their insurance? Can it cost me more? • Note that it is usually prudent to take out insurance even if the lease doesn't force you to. 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the insurance obligations.</i></p>
<p>Ability to deal with the lease</p> <ul style="list-style-type: none"> • Does the lease allow me to assign my lease if I sell my business? • What costs do I need to pay to the landlord if the landlord's consent is required? • 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the ability to deal with the lease.</i></p>
<p>Make good</p> <ul style="list-style-type: none"> • Do I have to remove the fit out at the end of the lease? • Do I need to repaint or recarpet the premises? • Do I have a written or photographic condition report? • • 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the make good portion of the lease.</i></p>
<p>Registration of the lease</p> <ul style="list-style-type: none"> • Will the lease be registered? • 	<p><i>Add the clause wording or reference number here.</i></p>	<p><i>Add comments on what you have found about the registration of the lease.</i></p>

B The other terms and conditions of a lease

Topic	Lease clause	My concerns/ questions
<p>Access</p> <ul style="list-style-type: none"> • What hours do I need to open, to prepare for trading and to close up? • Is this going to be a problem? • If I move into a retail centre can I be forced to stay open when I would want to close? • Can the hours be changed without my approval? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about access.</i></p>
<p>Fit out</p> <ul style="list-style-type: none"> • Can I be forced to carry out a fit out by the landlord or manager? • Who will: <ul style="list-style-type: none"> • own the fit out (and therefore be able to depreciate it)? • pay for it? When? • maintain it? To what standard? • upgrade it? How often? Even if I don't want to? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about fit out.</i></p>
<p>Relocation</p> <ul style="list-style-type: none"> • Can I be forced to relocate? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about relocation.</i></p>
<p>Other expenses</p> <ul style="list-style-type: none"> • Who pays for preparing the lease? • What else do I have to pay for and am I paying my fair share? For example: <ul style="list-style-type: none"> • signs, • permissions, • changing the lease, • stamp duty, • legal costs, • management fees, • landlord's outgoings, • promotion or advertising levies, • electricity, gas, cleaning, etc. • Who pays for fair wear and tear? Will my landlord fix that? • Do I have to pay GST on the rent or anything else? Can I claim a GST credit? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about other expenses.</i></p>

Topic	Lease clause	My concerns/ questions
<p>Security of the space and stock</p> <ul style="list-style-type: none"> • Who pays for security for my space and stock? • Interruption of my use. • What if I no longer need the space? Can I end the lease early? If so, do I have to pay any money? • What do I need to do if I want to sell the business or let someone else use the space? • Does the landlord promise me that I will be the only retailer of my type? What happens if I am not? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about security of the space and stock.</i></p>
<p>Landlords' rights</p> <ul style="list-style-type: none"> • Does a landlord have any special rights which will affect my use of the property? • When can a landlord bring a lease to an end without my agreement? What will it cost me if they do? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about Landlord's rights.</i></p>
<p>Resolving problems</p> <ul style="list-style-type: none"> • If we disagree during the lease is there a relatively quick, fair and cheap method for sorting out the problems? Do we have to follow that method? Is that process absolutely final? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about resolving problems.</i></p>
<p>Preconditions</p> <ul style="list-style-type: none"> • Is there anything on the landlord's part that prevents the lease from starting as soon as I sign it, e.g. mortgagee's consent? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about the preconditions.</i></p>
<p>Centre rules</p> <ul style="list-style-type: none"> • Are there any general rules that apply to me and other tenants in a retail centre? Are they reasonable? Do they apply fairly to all? How can they be changed? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about centre rules.</i></p>
<p>Restrictions on trading</p> <ul style="list-style-type: none"> • Can my landlord try to limit the way I trade during the lease or afterwards (restraint of trade)? 	<p><i>Add relevant lease clause</i></p>	<p><i>Add your concerns or questions about restrictions on trading.</i></p>

4. Negotiating the lease

Most landlords will have a preferred lease document that they will prepare and provide. However, this does not mean that these are the only terms and conditions that the landlord will agree to. You should feel comfortable with requesting amendments to the lease – your solicitor (or retail tenancy adviser (see relevant organisations at the back of this booklet)) will be able to assist in identifying what kinds of amendments you should ask for and what types of amendments are likely to be agreed to.

The below table identifies just a few example common clauses and the types of amendments that might be sought in relation to those clauses. It is very important though that ALL the clauses in the lease be reviewed – not just the ones mentioned below.

Another good source of information is obtaining a copy of a lease previously granted by the landlord to another tenant. If the landlord's leases are registered on title, you can obtain a copy from the relevant titles office (normally at a fee).

Clause and issue	What to look out for and possible amendments
<p>Option clauses</p> <ul style="list-style-type: none"> An option will generally have conditions that must be complied with in order for the tenant to be able to exercise the option when the relevant time comes. It is important to review those conditions to ensure that the clause provides the tenant with a 'real' right to a further lease. 	<p>Often a condition will be included in relation to the tenant not having breached the lease during the previous term. Such a clause might be amended to require only that the tenant is not in breach of the lease at the time when the option is exercised (and only a breach that has been previously notified to the tenant).</p> <p>This protects the tenant from being 'ambushed' by the landlord claiming that the tenant has breached or is in breach of the lease and only raising this when the tenant tries to exercise the option.</p>
<p>Costs clauses</p> <ul style="list-style-type: none"> Where a tenant is required to pay the costs of the landlord in relation to a particular matter – for example when the tenant requests the landlord's consent to an assignment of a lease – those costs should only be the reasonable costs of the landlord. Also, the landlord should provide you with evidence of those costs. 	<p>Clauses which simply require the tenant to pay the 'costs' of the landlord should be amended to include:</p> <ul style="list-style-type: none"> that those costs be 'reasonable'; and that the landlord be required to provide evidence of the costs before the tenant is required to pay for the costs.
<p>Indemnity clauses</p> <ul style="list-style-type: none"> An indemnity is generally a promise to keep another party harmless from loss or damage it might suffer in relation to a particular matter. Normally a landlord will seek an indemnity for problems that a tenant might cause that are outside the control of the landlord, for example, if someone is injured in the tenant's shop. 	<p>It is important to closely review any indemnity clause, for example, an indemnity provided by a tenant to the landlord should exclude any damage, loss, injury or death that is caused by the act, negligence or default of the landlord (i.e. anything that is the landlord's fault).</p>

Clause and issue	What to look out for and possible amendments
<p>Termination for breach rights</p> <ul style="list-style-type: none"> A lease will include a right for the landlord to terminate the lease if you are in breach of the lease. Such clauses should include an obligation for the landlord to issue you a notice bringing your attention to the breach and requiring you to fix or 'remedy' the breach within a particular time – before the landlord has the right to terminate the lease on the basis of the breach. 	<p>Review the notice requirements in relation to a right to terminate the lease. A notice giving a '14 day period' to remedy a breach is a common approach.</p> <p>Landlords are often less willing to agree to a notice and 'right to remedy' process where for example, the breach is for the non-payment of rent (as opposed to, for example, being in breach of an obligation to be open for business between particular hours).</p>
<p>When renewing a lease, a helpful clause would relate to when the landlord must notify the tenant of the new rent.</p>	<p>This is about being mindful that some clauses impact on other clauses e.g. option clauses and market rent review clauses.</p> <p>A lease might have a clause that allows a market rent review (mrr) at the commencement of an option term. It is important to review the mrr clause to ensure that it specifies how the new rent will be determined and when the landlord must notify the tenant of the new rent. If the mrr is due at the start of an option term, it is important to ensure that the tenant is notified of the new rent well before the beginning of the period for exercising the option. Otherwise the tenant could be in the position where they have committed to the further term without knowing whether their business can afford the new rent.</p>

<p>CASE STUDY</p> <p>Environmental obligations in leases</p> <p>Amie is given a draft lease which contains a clause which requires her to co-operate with the landlord to achieve and maintain the landlord's environmental objectives. How will this impact on Amie's business?</p> <p>'Green' provisions are becoming increasingly common in leases but they do not always contain clear details as to what is required. Even if Amie does want to support environmental initiatives, she should ask additional questions before she signs the lease, such as:</p> <p>What are the landlord's environmental objectives?</p> <p>Who bears the cost if new equipment is required?</p> <p>Will this limit the types of goods I can sell or the types of materials I can use?</p>

Signing my retail lease

How do I do it and what does it mean?

Before you sign, read right through the lease and disclosure statement and make sure there are no surprises. You need to make sure that every important promise has been written down in the document. Once you have both signed the lease, it is usually binding on both you and your landlord.

Most State/Territory retail tenancy legislation has special procedures that the landlord has to follow before the lease is signed. Check your retail tenancy legislation.

Your State/Territory retail lease legislation is concerned about how you and your landlord behave, especially before the lease is signed. Your retail lease legislation lists the kind of behaviour that is illegal. For example, you are both expected to be honest, not use threats and provide information that is up to date. Most States/Territories have fair trading legislation which is designed to protect consumers from unfair conduct. The Federal *Competition and Consumer Act 2010* can also offer some protection to tenants.

A lease is the beginning of a relationship. If it is difficult to negotiate with the landlord at the start of the discussions, listen to your alarm bells. It may be a clue as to how difficult it is going to be to negotiate with them during the lease. If you are concerned about the landlord's conduct during negotiations, talk to your local retail tenancy office, small or retail business association, fair trading office or your solicitor, before you sign the lease.

Don't forget to talk to other tenants.

Note

Talk to a professional or an association before you sign the lease.

Note

Once you are in a lease, it is hard to get out of it and it could cost you a lot of money.

Note

Once more before you sign the lease

- Make sure the promises that have been made appear in the document.
- Inspect the property and take notes and photographs. You don't want to argue about the condition five years from now.
- Talk to other tenants – see how they get along with the landlord.
- Ask for audited statements about outgoings such as gardening.
- Make sure you know who is going to keep the bond and where. You might ask who gets the interest. Get it in writing.

Being a tenant under the retail lease

What are the important things I need to remember?

Both the landlord and tenant have to abide by the lease. Your lease will tell you things you have to do while you are a retail lease tenant. Here are some of the usual things:

- **Pay all of the rent and all of the outgoings on time.** It is important to remember that, even if you believe that you are entitled to withhold or not have to pay rent or part of the rent for a particular reason (for example, you believe the landlord owes you money), the lease will normally prevent you from withholding any amounts from rent or outgoings. You will need to resolve the other issue as a separate matter with the landlord.
- **Have your rent reviewed.** The date and method of review are important – make a note of them and factor them into your accounting procedures. There is the possibility that you may be required under a lease to exercise an option prior to being informed what the asking rent is for any renewed term. You also probably don't have to get written notice when rent changes and may be asked for all increases at the end. Therefore know what you agreed to in the lease and plan for it.
- **Keep insurance current and make a note of when policies are due to expire.** You will normally be required to provide the landlord with evidence that your insurance is current at least once a year.
- **Request the landlord's consent to certain activities.** You will most likely be required to obtain the landlord's consent before you do certain things – like undertaking works on the premises, mortgaging your lease or selling your business and assigning the lease to the buyer.

Be active in monitoring yours and the landlord's compliance with the lease. In terms of your obligations under the lease, make up a table setting out your obligations and when you are required to do certain things.

Don't forget to also:

- Make a note of your other obligations such as protecting the property or giving turnover figures to your landlord.
- Work on maintaining a good relationship with the landlord but remember to keep notes.
- Don't let problems build up and then go in with a 'boots and all' list of demands. This will not improve your relationship. When you believe your landlord is not doing something that they are required to do under the lease, perhaps raise the matter in discussions with your landlord first. If the matter is not resolved, then set out your concerns in a letter to the landlord, advising the landlord of your concerns and identifying which clauses of the lease are relevant to those concerns.
- Never be late with anything – your landlord doesn't have to remind you but when it comes to negotiating changes or a lease renewal, they can hold your mistakes against you.

There are also some things your landlord must do. For example, your lease may require your landlord to repair and maintain, or provide estimates of outgoings (see Dictionary).

CASE STUDY

Carrying out works to the premises without the landlord's consent

Laura's restaurant has street frontage. Laura wants to undertake works to the front of her restaurant to move the doorway from the left side of the shopfront to the right side. She is keen to get works underway as soon as possible and has her contractor friends commence works during a quiet weekend. The landlord becomes aware of the works and issues Laura with a 'breach notice', requiring her to immediately stop the works.

Under the lease, prior to commencing any works, Laura is required to request the landlord's consent to any works undertaken on the premises, and to provide the landlord with copies of relevant plans and details as to who will undertake the works. This is to give the landlord control over changes to the structure of its building as well as to give the landlord comfort that qualified tradesman will be used for such works.

When my retail lease ends

What do I need to do?

Your lease will tell you what you need to do when it ends. You may need to simply leave the space empty, clean, tidy and secure. You may have to remove fittings and fixtures and make good the damage you make on removal. You may have to repaint or recarpet the space. These are important obligations and landlords are usually concerned to see that tenants leave the property in an agreed condition.

Sometimes a landlord will accept a cash payment instead of requiring you to 'make good', that is, return the space to the condition it was in before the lease commenced. (You can see why taking notes and photographs before you sign a lease is important). Be careful – sometimes you may be required to return the space to an even better condition than before the lease commenced. Even though the landlord may want your fittings, they can still make you pay to make good if it is in the lease. That is why it is important to sort this out before you sign. There are no hard and fast rules – this is a matter for you to negotiate and write into the lease.

Until you do all you have to do, your landlord can continue to charge you rent. Your landlord may be able to take items you leave in the retail space at the end of the term. The landlord may have to store these – usually at your cost – or may be able to claim them as their own. (See 'make good' in Dictionary).

CASE STUDY

Dispute as to 'make good'

Phil's lease is coming to an end and he is required to remove all of his fit out and to repaint the premises and remove any flooring that he has put in the premises, and to generally leave the premises in the condition that he found the premises in when the lease started. Phil does the relevant works and vacates the premises. However, the landlord calls Phil and says that Phil has not removed the glue residue that he applied when installing his tiled flooring. The landlord is saying that Phil can either come back and remove the residue or the landlord will do it and then charge Phil for the works. The landlord is also saying that the landlord will still be charging Phil rent while the glue residue remains.

It is important to review the make good obligations under a lease. Make good can be a significant cost at the end of a lease. If a tenant fails to comply with its obligations a landlord will generally have rights to undertake the works themselves and charge the tenant for the works or continue to charge rent to the tenant.

If I don't want my retail lease to end

What can I do?

You can never start renewal renegotiations too soon. Leave it to the last minute and you'll find a desperate person is in a poor bargaining position.

Your lease or the retail lease legislation may give you some options. Some legislation will require that the landlord gives you a preference to a new lease over a new tenant.

You must follow the procedures and timeframes carefully or you will lose rights given to you by your lease and retail lease legislation. Be aware that the landlord may also be required to follow specific procedures and timeframes under the relevant legislation.

If your lease contains an option to renew for a further term, you must follow the procedures and timeframes in the option clause very carefully or you will lose your option. If you have not complied with your lease obligations you may not be able to renew it. Check the wording of your option clause carefully. If you have any doubts, check with your solicitor.

Some tips for renegotiating a lease

Commit to developing a good working relationship with your landlord during the life of your lease. This can often be the key to securing a further lease with the landlord on favourable terms and conditions. Any reasonable landlord will be more willing to keep on a good tenant that pays the rent and other amounts due on time and is reasonable to deal with. This does not mean that you can't make complaints to the landlord when things go wrong or when the landlord fails to do something that it is required to do under the lease.

Market knowledge is power. Remember to continue to undertake your market research during the life of your lease. The more you know about the market, the more you are able to gauge the amount of bargaining power you have. See the table at page 7 for tips on undertaking market research.

When you have completed your market research, approach the landlord and express your interest in taking up a new lease. Both parties will want to agree the commercial details (such as term and rent) first.

If the landlord is willing to grant you a new lease, remember that it is just that – a new lease. You do not need to agree on the same terms and conditions that applied to the previous lease. This is your chance to fix any issues in the documents that you became aware of during the course of the original lease term.

A suggested approach to renegotiation is as follows:

- start with the commercial terms or 'core lease details' for your renegotiations – see the table at page 10 for tips on what these are
- after the 'core lease details' are agreed, then move on to the other lease terms and conditions – see the table on page 13 for more details on these. A good approach might be to start with your current terms and conditions in the current lease and then consider the things that you might like to change based on your experience with the document over the previous term. What did or didn't work for you? Has your business changed and does this require a change to the document?
- What are the current terms being negotiated for other shops in the area where you want to be located?

Note:

You have no automatic right of renewal unless your lease or legislation gives it to you.

Dealing with problems

Where do I start?

It is important to remember that signing a lease is the start of a relationship with your landlord. Both you and your landlord share a common interest – to trade successfully and profitably.

You can both build on this common interest and create a spirit of cooperation. Many day-to-day problems can be overcome if you read your lease and talk to your landlord or centre manager about your concerns. This often works, and saves time and money.

What if there is still a problem?

Unfortunately it does not always work, so each State/Territory has a special procedure to help to resolve retail tenancy disputes.

Dispute resolution services are intended to save you the expense of going to court and to help you resolve a dispute reasonably quickly. The systems vary slightly among States and Territories but work along the same general principles. In some situations, you cannot go to court unless you have tried alternative ways of resolving the problem. In other situations, while mediation or dispute resolution is encouraged, it does not stop you from going to court at any time.

You will need to check your State/Territory resource lists for contact details for where to find out more about your local procedures.

Your State/Territory dispute resolution system may include mediation so here is a little more information about how it works.

What is mediation?

It is a private discussion between you and your landlord where a trained mediator manages the process. It is not open to the public and the proceedings are confidential.

Mediation is an informal process. The mediator will welcome you and invite the parties to outline their problem. If you or your landlord wishes to put forward a proposal to resolve the dispute, you may be able to do so at any time during the mediation, or even before it gets to mediation.

The mediator is not a judge. The mediator's role is to help you and your landlord better understand the situation and consider if you want to come to an agreement at this stage. You can ask for a break to think about matters raised in the mediation.

If you reach an agreement during a mediated session, you both may have to sign a mediation agreement or a form of contract. The agreement or contract you sign as a result of the mediation will be binding.

You usually start the mediation process by lodging a special form. In some States or Territories you may have to pay a fee. Sometimes there is a preliminary conference. Your local retail tenancy office, small or retail business association, or fair trading office staff will help you and tell you about the procedures and fees. You may want to get professional advice before the mediation. You may also want to take a representative with you. Your local retail tenancy office, small or retail business association, or fair trading office staff will tell you if this is allowed.

How do I get ready for mediation?

Here is a helpful checklist.

- Read your lease again!
- Consider your rights under your retail lease legislation – your local retail tenancy office, small or retail business association, or fair trading office can help.
- Consider asking for expert help.
- Write down carefully the exact nature of your dispute. The sorts of things that may be important are:
 - the date your lease was signed
 - the date you moved into the retail shop
 - the length of the term of your lease
 - whether your lease contains an option to take a lease for a further term
 - the nature of the business you run in the retail shop.
- Put together copies of your lease, disclosure statement and any other documents relating to the dispute such as letters, notices, extracts from your diary and accounts.
- Consider possible solutions to resolve the dispute.

What happens if mediation does not work?

Your State/Territory advisers can tell you what happens next. Depending on where you live, you might be able to take it to a tribunal (if your State/Territory has one) or to court, depending on the size and issues under dispute.

Most of the tribunals were created as specialist bodies that deal only with retail lease disputes. They were designed to give a cheaper and quicker result than traditional courts.

The tribunal is much more formal than mediation – its directions and orders are binding.

Can I go straight to court?

The special procedures to resolve retail tenancy disputes are designed to keep most retail tenancy disputes out of court but that does not always mean it is not an option. Check your retail lease legislation, ask your local retail tenancy office, fair trading office, small or retail business association, or get expert advice on what is available in your State or Territory.

CASE STUDY

Responsibility to repair and maintain versus replace

An air-conditioning unit that is part of the landlord's fittings provided within Victoria's shop has broken down. Under the lease Victoria has an obligation to 'maintain and repair' the unit. Victoria has called in a contractor to look at the unit, but the contractor has told her that the unit has reached the end of its life and can't be fixed. Victoria calls the landlord and the landlord says that Victoria needs to replace the unit.

Under a lease it is important to clearly distinguish between obligations to 'repair and maintain' versus obligations to 'replace'. As the air-conditioning unit is owned by the landlord – it makes sense that the landlord should be the one to replace the unit when the time comes. Alternatively, if the tenant is required to replace the unit, the tenant should then take ownership of the unit and be able to take it with them when the lease ends or sell it to the landlord or a third party (assuming that the landlord's unit has broken down due to fair wear and tear and not because the tenant has damaged the unit).

If a lease is left silent on a particular matter and the parties disagree, it will ultimately be left to a third party (for example, a Court) to decide.

Typical steps to resolving a dispute

Remember this varies a little among the States and Territories: ACT, NSW, NT, QLD, SA, TAS, VIC and WA

- **Write** down your issues
- **Do** your homework
- **Talk** with your landlord or centre manager to try to sort things out.
Did it work? If no, continue...
- **Ring** your State/Territory agency for help
(Consumer Affairs/Fair Trading)
- **Negotiate** with your landlord with agency's help (informal discussion).
Did it work? If no, continue...
- **Seek** mediation. (If no mediation is available in your State/Territory agency, volunteer and private practice mediators are listed in the telephone book.)
- **Mediate.** Did it work? If no, continue...
- **Consider** taking it to a tribunal, where this is an option.
(You'll have to follow local procedures)
Did it work? If no, continue...
- **Seek** legal advice about court options.
If you want to, it can be useful to seek legal advice earlier in the process.

Answers to frequently asked questions

What if the building is sold?

If the building is sold the obligations and rights under the lease generally transfer automatically to the new owner. There are a few personal rights that may need to be transferred (like security bonds) but this is usually dealt with in your lease.

By buying the building with notice of your lease (registration does this) the new owners generally become bound to you as though they were the original landlord. In some cases the landlord is bound in the same way even if they don't have notice of your lease. Of course, it is always better if the new owner knows about the conditions in your lease. Most States and Territories allow leases to be registered by the Land Titles Office. This is one sure way of a new owner having notice of your lease. If your landlord won't register the lease, in some States and Territories you can do it yourself. It is the most effective way to protect your interests.

Remember, depending on the term of your lease, it may be very important for your lease to be registered on the title to the land. See page 4 for more details.

What if the tenancy mix changes?

In most States/Territories your landlord is not required to protect you from competition or tell you about proposed tenancy mix changes unless you have a special written clause in your lease. This is why it is important to walk around and have a look at kiosks and tenancy mix before you sign the lease. If you are concerned and promises have been made, make sure that your lease includes these.

What if the landlord disrupts my business?

Retail landlords promise their tenants that they will have quiet possession of the retail space. Under your retail lease legislation you may be given additional rights if your landlord interrupts your business, for example, by creating disruption during refurbishment, putting up special displays on common property, or placing new temporary kiosks. Check your retail lease legislation.

CASE STUDY

Disruption of business by landlord

Adam's shop is located within a shopping centre and has good visibility and good passing pedestrian traffic. The landlord allows for a small temporary kiosk selling lollies to open up out the front of the premises. The kiosk inhibits the visibility of Adam's shop and has the effect of diverting pedestrian traffic around the front of the shop. Adam requests that the kiosk be moved or alternatively that he receive a reduction in rent whilst the kiosk is there. The lease does not say anything about this type of situation, however under the relevant retail legislation; Adam has rights to seek compensation from the landlord for a loss of quiet enjoyment of the premises. Adam would need to prove that his quiet enjoyment of the premises has been disrupted - this is likely to be difficult. It is not enough that the kiosk is affecting his business.

If there is a large space out the front of your premises that you rely on for good visibility of your shop, it will be in your interest to ensure that the landlord does not do something within that space that negatively affects your shop. Although you normally can't control who else leases shops within a centre, you may, within the lease document itself, be able to protect large open spaces from being filled with kiosks.

Can I mortgage my lease?

In some States/Territories you can mortgage your lease unless your lease says you cannot. Leases usually say you have to ask your landlord for permission. Your retail lease legislation may set out the steps you and the landlord have to follow when you want to mortgage, and what conditions the landlord can impose.

What if I want to sell my business or let someone else use part of my retail space?

This is often called 'assignment' or 'subleasing'.

Leases usually say you have to ask your landlord for permission or consent if you want to assign or sublease your retail space (and you will usually have to pay the landlord's costs for the landlord preparing a consent document that you, the new tenant and the landlord will sign). Your lease and the retail lease legislation may set out the steps you and the landlord have to follow, what conditions the landlord can impose and whether or not you are released from future obligations under the lease after the sale of the business. If your retail lease legislation does not mention release then you are not released from your future obligations under the lease unless the landlord agrees to release you. Your guarantors may also remain liable unless you and they are fully released by agreement with your landlord. It is very important that you get expert advice on this.

What happens if I default under my retail lease?

Each lease can be quite different.

Your lease will tell you something about what happens in your situation. The law is complex so not many leases spell out in full either what is default or all of the consequences of default. It is very important that you get expert advice on what your lease says about default – particularly if you have been issued with a 'breach notice' by your landlord. Even a single default can have consequences years later (for example you may be liable for the legal costs of the landlord and future rent).

Most breaches are capable of being fixed, for example those like undertaking works without consent or not operating your business within the required hours.

If you are experiencing financial difficulties, it is important to talk to your landlord and try to come to some arrangement with your landlord before you go into default for non-payment of rent. Non-payment of rent or other monies under a lease is generally treated more seriously than other types of breaches.

CASE STUDY

Dispute when tenant's business is sold

Chris has been advertising his business for sale for some time and has now found a potential buyer. Under the lease, he is required to obtain the landlord's consent to an assignment of the lease to a new tenant. Chris requests the landlord's consent and is asked to provide details of who the new tenant is, their financial records and their experience in running a similar business. Chris tells the landlord that he does not have that information and does not believe he should have to provide it to the landlord.

In such circumstances, a lease and the relevant retail lease legislation will generally require the tenant to provide the landlord with the information that the landlord reasonably requests in relation to a proposed new tenant. The landlord is not required to obtain the information for itself. The landlord needs the information in order to assess whether the proposed new tenant will be a good tenant – just as the landlord assessed whether the original tenant would be a good tenant prior to entering the lease.

State and Territory Information Resources

Business associations

Business associations which may be able to assist you include:

National

- **Australian Retailers Association**
Ph: 1300 368 041
www.retail.org.au
- **National Retail Association**
Ph: 1800 738 245
www.nra.net.au
- **The Convenience & Mixed Business Association**
Ph: (03) 9562 6677
www.camba.com.au

Also check your local Yellow Pages[®], available online at www.yellowpages.com.au for specific industry associations such as bakers, beauticians, butchers etc. You can also search for business associations on the *Government and business associations directory* available online at www.business.gov.au.

Business licensing information services

You need to find out whether there are any licensing requirements for the kind of business you are opening. If you have already had a similar business, you still need to find out whether licence rules have changed

This is where you will find Business Licence Information in your state or territory

<http://www.business.gov.au/BusinessTopics/Registrationandlicences/pages/BusinessLicenceInformationServiceinyourstateorterritory.aspx>

Information Guides

<http://www.business.gov.au/Howtoguides/Startingabusiness/Startinganewbusiness/Howdolsetupoperations/pages/Retailleasinginyourstateorterritory.aspx>

Australian Capital Territory

Legislation

Leases (Commercial and Retail) Act 2001

The *Leases (Commercial and Retail) Act 2001* is available online from the ACT Legislation Register at www.legislation.act.gov.au. Information is available at the Office of Regulatory services at <http://www.ors.act.gov.au> or (02) 6207 3000.

Dispute Resolution

The Magistrates Court has jurisdiction to decide applications made under the Act at <http://www.courts.act.gov.au/magistrates/> or (02) 6207 1709.

Business associations

- **ACT and Region Chamber of Commerce & Industry**
Ph: (02) 6283 5200
www.actchamber.com.au

Retail Traders Association in the ACT and Region Incorporated is affiliated with the ACT and Region Chamber of Commerce and Industry. Contact the ACT and Region Chamber of Commerce & Industry for further information.

New South Wales

Legislation

Retail Leases Act 1994

- The *Retail Leases Act 1994* is available online from the NSW Legislation website at www.legislation.nsw.gov.au. The Act is also available from the Retail Tenancy Unit website at www.retail.nsw.gov.au. Information is available from the Office of the NSW Small Business Commissioner at www.smallbusiness.nsw.gov.au or 1300 795 534.

Mediation services

- Office of the NSW Small Business Commissioner at www.smallbusiness.nsw.gov.au or 1300 795 534.

The Retail Tenancy Unit Dispute Resolution Kit

This kit has information about preventing and resolving disputes. Email we.assist@smallbusiness.nsw.gov.au to request one to be posted to you.

Business associations

- **Retail Traders and Shop Keepers Association of NSW**
Telephone: 1300 302 196
Email: rtsa@pacific.net.au
- **NSW Business Chamber**
Ph: 13 26 96
www.nswbusinesschamber.com.au
- **Sydney Business Chamber(part of the NSW Business Chamber)**
Ph: (02) 9350 8100
www.thechamber.com.au

Northern Territory

Legislation

Business Tenancies (Fair Dealings) Act 2009

The *Business Tenancies (Fair Dealings) Act 2009* is available online from the Northern Territory Legislation Database at www.nt.gov.au/dcm/legislation. Information is available from the Office of Consumer Affairs website at www.nt.gov.au/justice/consaffairs or 1800 019 319.

Mediation services

- The Office of Consumer Affairs website at www.nt.gov.au/justice/consaffairs or 1800 019 319.

Business associations

- **Northern Territory Chamber of Commerce & Industry**
Ph: (08) 8982 8100
www.chambernt.com.au

Queensland

Legislation

Retail Shop Leases Act 1994

The *Retail Shop Leases Act 1994* is available online at www.legislation.qld.gov.au. Information is available from the Retail Shop Leases Registry at www.justice.qld.gov.au or 1800 807 051.

Mediation services

- **Queensland Civil and Administrative Tribunal**
www.qcat.qld.gov.au
1300 753 228

Business associations

- **Chamber of Commerce & Industry Queensland**
Ph: 1300 731 988
www.cciq.com.au
- **The Retailers Association**
Ph: 1300 721 730
www.theretailersassociation.com.au

South Australia

Legislation

Retail and Commercial Leases Act 1995

Copies of the *Retail and Commercial Leases Act 1995* are available online at www.legislation.sa.gov.au. Information is available from Consumer and Business Affairs at www.ocba.sa.gov.au/tenancies or 131 882 or the Office of the South Australian Small Business Commissioner at www.sasbc.sa.gov.au or (08) 8303 2026.

Mediation services

The South Australian Small Business Commissioner at www.sasbc.sa.gov.au or (08) 8303 2026.

Business associations

- **Business SA**
Ph: (08) 8300 0103
www.business-sa.com
- **State Retailers Association of South Australia Inc.**
Ph: (08) 8352 8233
www.stateretailersinfoline.com

Tasmania

Legislation

Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998

The *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* is available from the Tasmanian Legislation Database website at www.thelaw.tas.gov.au. Information is available from Consumer Affairs and Fair Trading at www.consumer.tas.gov.au or 1300 65 4499.

Mediation Services

Consumer Affairs and Fair Trading at www.consumer.tas.gov.au or 1300 65 4499.

Business associations

- **Tasmanian Chamber of Commerce & Industry Ltd (TCCI)**
Ph: 03 6236 3600
www.tcci.com.au

Victoria

Legislation

Retail Leases Act 2003

The *Retail Leases Act 2003* is available from the Victorian Legislation Database website at www.legislation.vic.gov.au. Information is available from the Office of the Victorian Small Business Commissioner at www.sbc.gov.au or (03) 9651 9316.

Mediation Services

- **Office of the Victorian Small Business Commissioner**
www.sbc.vic.gov.au
Ph: (03) 9651 9316

Business associations

- **Victorian Employers' Chamber of Commerce & Industry**
Ph: (03) 8662 5333
www.vecci.org.au

Western Australia

Legislation

The *Commercial Tenancy (Retail Shops) Agreements Act 1985* and the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* are available from the State Law Publisher website at www.slp.wa.gov.au. Information is available from the Department of Commerce at www.commerce.wa.gov.au or 1300 30 40 54 and the Small Business Development Corporation at www.smallbusiness.wa.gov.au or 13 12 49.

Mediation services

The Small Business Development Corporation at www.smallbusiness.wa.gov.au or 13 12 49.

Business associations

- **Chamber of Commerce & Industry of Western Australia**
www.cciwa.com
- **Retail Traders Association of WA (affiliated with the Chamber of Commerce & Industry of Western Australia)**
Telephone: 08 9365 7695
Email: rta@cciwa.com

Dictionary of some common terms and their definitions

Assign

'Assign' means the transfer of the rights and obligations of the tenant to a new tenant who accepts them. For example, if you sell the business you carry out from the premises, you will need to assign your lease to the buyer of your business to enable them to also carry out the business from the premises.

Disclosure statement

A 'disclosure statement' is a statement required by some retail tenancy legislation. It is usually given by the landlord to the tenant. It contains important details about the premises, the estimated outgoings payable by the landlord and how the tenant has to contribute to these as at the date it is signed. These details may change. In some States/Territories you must also provide a disclosure statement to the landlord.

Fit out

'Fit out' is not a precise term but will usually refer to the property of the tenant within the premises. What is part of the fit out will vary. They usually contain fixtures and fittings. They may include equipment or services. A fit out usually includes counters, shelves, display areas, painting and decorating.

Fittings

'Fittings' usually include fixtures, partitions and equipment fixed to the premises in such a way as to become a part of the premises.

Goodwill

'Goodwill' is usually used to refer to the benefit and advantage of the good name and reputation of a business. The time left to run before the lease expires is sometimes considered to be part of the goodwill 'value'.

Key money

This generally means a payment or benefit given to a landlord for considering a new lease, its renewal, extension or assignment. Your retail lease legislation may have a special definition. Taking key money is not allowed in some States and Territories.

Lessee

The word 'lessee' means the same as 'tenant'.

Lessor

The word 'lessor' means the same as 'landlord' or 'property owner'.

Make good

'Make good' refers to the works that must be undertaken and the condition that the landlord requires the premises to be put in at the end of the lease. It may include requirements to remove shop fittings, false walls and signs, repair flooring, wiring, painting, cleaning etc. It should be made clear within the make good clause what works you are actually required to do.

Option

An 'option' is a right to be granted another lease for a new term when your current lease expires.

Outgoings

'Outgoings' are the landlord's expenses relating to the retail lease space.

Here are some examples:

- rates and land taxes
- levies and charges under strata, community unit title or similar laws
- insurance
- cleaning
- indoor and outdoor gardening and landscaping
- caretaking
- security
- regulating traffic
- management, administration and marketing
- supplying, maintaining, repairing and replacing services and
- building maintenance.

Your retail tenancy legislation may have a special definition and also special rules about outgoings. In some States, land taxes are not included in outgoings.

Ratchet clause

If a lease has a 'ratchet clause', when a rent review happens the rent cannot decrease. Note that ratchet clauses are illegal in some States and Territories.

Relocation

'Relocation' means moving from one retail space to another during the term of the lease. Your retail tenancy legislation may have special rules about when the tenant can be asked to move and what happens when they do.

Security bond/ Security deposit

A lease might require a tenant to pay a sum of money or provide a bond as security against default. If you have carried out all your obligations under your lease this will be returned to you. Your retail tenancy legislation may fix a maximum amount for the bond or deposit. It might also tell you how and when the landlord can have access to that money.

Sinking fund

A tenant may be required to pay into a fund which the landlord uses for major repairs and maintenance. Your retail lease legislation may apply strict rules to these funds.

Turnover rent

'Turnover rent' is rent that is calculated as a proportion of a tenant's turnover.