



New South Wales

Retail Leases Amendment Act 1997 No 52

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Retail Leases Amendment Act 1997 No 52

Act No 52, 1997

An Act to amend the *Retail Leases Act 1994* to make further provision with respect to the payment, apportionment and adjustment of outgoings and other expenditure under a retail shop lease, the payment of mediation costs, and the award of interest on claims for the payment of money; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retail Leases Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Retail Leases Act 1994 No 46

The *Retail Leases Act 1994* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit “of operating, repairing or maintaining” from paragraph (a) of the definition of *outgoings*.

Insert instead “directly attributable to the operation, maintenance or repair of”.

[2] Section 3, definition of “retail shopping centre”

Omit “with the following attributes”.

Insert instead “that has all of the following attributes”.

[3] Section 3, definition of “retail shopping centre”

Omit “are promoted” from paragraph (d).

Insert instead “is promoted”.

[4] Section 5 Certain retail shops excluded from the operation of this Act

Re-number existing paragraph (d) as paragraph (e) and insert the following as paragraph (d):

- (d) any premises in an office tower that forms part of a retail shopping centre,

[5] Section 28

Omit the section. Insert instead:

28 Lessor to provide statement and report on outgoings

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *outgoings statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of outgoings to which the lessee is required to contribute.

- (b) If the shop is in a retail shopping centre, the outgoing statement must include a statement of the current gross lettable area of the shopping centre and details of any material change in that gross lettable area during the period to which the outgoing statement relates.
- (c) The outgoing statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (d) The outgoing statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (e) The outgoing statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*).
- (f) The auditor's report is to include a statement by the auditor as to whether or not the outgoing statement correctly states the expenditure by the lessor during the accounting period concerned in respect of outgoing to which the lessee is required to contribute, and as to whether or not the total amount of estimated outgoing for that period (as shown in the estimate of outgoing given to the lessee) exceeded the total actual expenditure by the lessor in respect of those outgoing during that period.
- (g) The outgoing statement may be a composite statement (that is, it may relate to more than one lessee) so long as each lessee to which it relates is able to ascertain from the statement the information required by paragraph (a) that is relevant to that lessee.
- (h) The outgoing statement need not be accompanied by an auditor's report if the statement does not relate to any outgoing other than land tax, water,

sewerage and drainage rates and charges, local council rates and charges and insurance, and it is accompanied by copies of assessments, invoices, receipts or other proof of payment in respect of all expenditure by the lessor as referred to in paragraph (a).

[6] Section 29 Adjustment of contributions to outgoings based on actual expenditure properly and reasonably incurred

Omit paragraph (a). Insert instead:

- (a) There is to be an adjustment between the lessor and the lessee for each accounting period of the lessor to take account of any under-payment or over-payment by the lessee in respect of outgoings during the period. The adjustment is to take place within 1 month after the lessor gives the lessee the outgoings statement referred to in section 28 for the period concerned and must in any event take place within 4 months after the end of that period.

[7] Section 55

Omit the section. Insert instead:

55 Lessor to provide statement and report on advertising and promotion expenditure

A retail shop lease is taken to include provision to the following effect:

- (a) The lessor must give the lessee a written statement (an *advertising statement*) that details all expenditure by the lessor in each accounting period of the lessor during the term of the lease on account of advertising or promotion costs to which the lessee is required to contribute under the lease.

- (b) The advertising statement is to be prepared in accordance with relevant principles and disclosure requirements of applicable accounting standards made by the Australian Accounting Standards Board, as in force from time to time.
- (c) The advertising statement is to be given to the lessee within 3 months after the end of the accounting period to which it relates.
- (d) The advertising statement is to be accompanied by a report (an *auditor's report*) on the statement prepared by a registered company auditor (within the meaning of the *Corporations Law*).
- (e) The auditor's report is to include a statement by the auditor as to whether or not the advertising statement correctly states the expenditure by the lessor during the accounting period concerned in respect of advertising or promotion costs to which the lessee is required to contribute.

[8] Section 57 Relocation

Omit "(including as to rent)" from section 57 (c).

[9] Section 57 (c)

Insert at the end of the paragraph:

The rent for the alternative shop is to be the same as the rent for the existing retail shop, adjusted to take into account the difference in the commercial values of the existing retail shop and the alternative shop at the time of relocation.

[10] Section 57 (f)

Omit "including legal costs".

Insert instead "including (but without being limited to) costs incurred by the lessee in dismantling and reinstalling any fixtures and fittings, and legal costs, in connection with the relocation".

[11] Section 57

Omit “a new lease” from the note at the end of section 57.
Insert instead " a new 5 year lease”.

[12] Section 66 Mediation of disputes

Omit “the person or persons applying to the Registrar for mediation of the dispute” from section 66 (2).
Insert instead “the parties to the mediation”.

[13] Section 72A

Insert after section 72:

72A Power of Tribunal to award interest

- (1) When the Tribunal orders on a retail tenancy claim that a person pay money to another person, the Tribunal may order that there is to be included, in the amount ordered to be paid, interest at a specified rate on the whole or any part of that amount for the whole or any part of the period between when the cause of action arose and when the order takes effect.
- (2) If the whole or part of an amount claimed under a retail tenancy claim is paid during proceedings in the Tribunal on the claim, prior to or without an order for payment being made in respect of the claim, the Tribunal may order that interest be paid at a specified rate on the whole or any part of the money paid for the whole or any part of the period between when the cause of action arose and the date of the payment.
- (3) The rate of interest specified by the Tribunal under this section must not exceed the rate at which interest is payable on a judgment debt of the District Court.
- (4) This section does not:
 - (a) authorise the giving of interest on interest, or

- (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise, or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (5) On a claim for the payment of money, the Tribunal may not order the payment of interest under subsection (1) in respect of the period after the date on which an appropriate settlement sum (or the first appropriate settlement sum) has been offered unless the special circumstances of the case warrant the making of such an order.
- (6) For the purposes of subsection (5), *appropriate settlement sum* is a sum offered by a party in settlement of a claim for the payment of money where the amount ordered to be paid (including interest accrued up to and including the date of the offer) does not exceed the sum offered by more than 10 per cent. Subsection (5) does not prevent an award of interest for the period before the settlement offer is made.

[14] Section 78A

Insert after section 78:

78A Meaning of “the Act” in leases

A retail shop lease is taken to include provision to the effect that a reference in the lease to *the Act* is a reference to the *Retail Leases Act 1994*, except in so far as the context or subject-matter otherwise indicates or requires.

[15] Section 84A

Insert after section 84:

84A Savings and transitional provisions

Schedule 3 has effect.

[16] Schedule 2 Disclosure statement

Omit “Total Lettable Area” from the matter relating to retail shopping centre details.

Insert instead “Gross Lettable Area”.

[17] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions

(Section 84A)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

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- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Retail Leases Amendment Act 1997

2 Meaning of "1997 Amending Act"

In this Part:

1997 Amending Act means the *Retail Leases Amendment Act 1997*.

3 Application of 1997 amendments

Each amendment made by the 1997 Amending Act extends to leases to which this Act applies that were entered into before the commencement of the amendment, subject to the other provisions of this Part.

4 Outgoings statements and reports

Section 28 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 28 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

5 Adjustment of outgoings contributions

The amendment to section 29 made by the 1997 Amending Act does not apply in respect of an outgoings contribution period that ended before the commencement of the amendment.

6 Advertising and promotion statements and reports

Section 55 (as substituted by the 1997 Amending Act) does not apply to a report given under that section before the section was substituted. Further, section 55 (as substituted) does not apply in respect of an accounting period of a lessor that ended before the section was substituted, unless the lessor elects to have the section apply in respect of that accounting period.

7 Mediation costs

The amendment to section 66 made by the 1997 Amending Act extends to formal mediation commenced but not completed before the commencement of the amendment.

8 on claims

Section 72A does not apply to a retail tenancy claim lodged with the Commercial Tribunal before the commencement of that section.

[Minister's second reading speech made in—
Legislative Council on 16 April 1997
Legislative Assembly on 27 June 1997 p.m.]